Supreme Court, U. S.
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74-942

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974 No.

FRANK L. RIZZO, et al.,
Petitioners,

v.

GERALD G. GOODE, et al., etc.
Respondents

HONORABLE JAMES H. J. TATE, et al.,

FRANK L. RIZZO, et al.,
Petitioners,

v.

COUNCIL OF ORGANIZATIONS OF PHILADELPHIA POLICE ACCOUNTABILITY AND RESPONSIBILITY,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Petition For A Writ Of Certiorari To The United States Court of Appeals For The Third Circuit

---

The petitioners Frank L. Rizzo, et al. and Honorable James H. J. Tate, et al., respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Third Circuit entered in this proceeding on November 1, 1974.

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Third Circuit, filed November 1, 1974, is not yet reported and is set forth in the Appendix hereto, beginning at page 4a.

The Final Judgment of the United States District Court for the Eastern District of Pennsylvania, dated October 5, 1973, and the Appendix accompanying that judgment has not been reported and is set forth in the Appendix hereto, beginning at page 20a.

The findings of fact and conclusions of law of the District Court are contained in the Court's Opinion dated March 14, 1973 which is reported at 357 F. Supp. 1289 (E. D. Pa. 1973).

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on November 1, 1974. A timely petition for rehearing *en banc* was denied on December 6, 1974, and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Section 1245 (1).

QUESTIONS PRESENTED

Is it an abuse of injunctive power of the federal district courts for a court to assume control of a major aspect of the operations of a municipal police department, require the issuance of its own intra-departmental procedural directives and maintain a continuing judicial surveillance over the department's operations?

Is equitable relief precluded where the legal remedies available are not only adequate, but are spcifically drawn to protect the very interests which the equitable relief seeks to protect?

STATUTORY PROVISIONS INVOLVED

Civil Rights Act of 1871:

42 USC Section 1983: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

STATEMENT OF THE CASE

This Petition arises from the decision of the United States Court of Appeals for the Third Circuit to affirm the judgment of the United States District Court for the Eastern District of Pennsylvania. The District Court, through a mandatory injunction, directed the Philadelphia Commissioner of Police to revamp the Police Department's internal procedures for disciplining policemen in order to provide a public forum for hearing citizen complaints of police misconduct.

Two separate cases were filed by different plaintiffs purporting to represent essentially the same class of persons and suing generally the same defendants, i.e. the Mayor and other officials of the City of Philadelphia and its Police Department. These two cases, *Goode, et al.* v. *Rizzo, et al.* and *COPPAR, et al.* v. *Tate, et al.*, were tried separately to conclusion, but were consolidated by the District Judge for purposes of decision.

Goode, et al. v. *Rizzo, et al.*

On February 17, 1970, the Goode plaintiffs filed their complaint in this case. Defendant-petitioners are Frank L. Rizzo, Mayor of the City of Philadelphia, Hillel S. Levinson, Managing Director of the City of Philadelphia, Joseph F. O'Neill, Police Commissioner and Police Captain William Murphy.[1] The complaint alleged that two Philadelphia police officers, Anthony DeFazio and John D'Amico, had engaged in a practice of violating the

[1] These defendants were substituted by Order of the District Court dated September 11, 1973. The original defendants were former Mayor James H. J. Tate, former Managing Director Fred T. Corleto, former Police Commissioner Frank L. Rizzo, former Deputy Commissioner of Police Robert G. Selfridge and Captain Murphy.

constitutional rights of black citizens of the City of Philadelphia. Officers DeFazio and D'Amico were never made defendants.

By way of relief, plaintiffs sought a mandatory injunction requiring defendants to revise their disciplinary procedures with regard to handling citizen complaints of police misconduct. Plaintiffs also demanded that DeFazio and D'Amico be dismissed from the Police Department.

The petitioners moved for dismissal, first under F.R.Civ.P. 12(b)(6) and subsequently pursuant to F.R.Civ.P. 41(b). Your petitioners asserted that Officers DeFazio and D'Amico were indispensible parties whom plaintiffs failed to join; that absent a showing that the named defendants deprived the plaintiffs of any federally protected right, the defendants could not be held liable; and that, in any event, the Court had no authority to intrude into the internal administration of the Police Department in the manner sought by plaintiffs.

The District Court denied both motions to dismiss, although the Court did ultimately hold that since DeFazio and D'Amico were not parties to this suit, no relief could be directed against them. 357 F. Supp. at 1318-9.

In essence, it was the position of plaintiffs and ultimately of the District Court that there were incidents of police misconduct which called for disciplinary action, but where no disciplinary action was taken; and that there were incidents in which the disciplinary action taken was not sufficiently severe. In making its findings of fact, the District Court recounted nine incidents, occurring over a period of nine months, of alleged misconduct on the part of Officers DeFazio and/or D'Amico. 357 F. Supp. 1294-1301. Of these nine incidents the Court found that on four occasions complaints to the Police Department had been made regarding the officers' conduct. The Court found that the offending officer was disciplined on two

occasions,[2] was not disciplined on one occasion;[3] and, on one occasion the complainant refused to press charges when advised to do so by the police.[4]

COPPAR, et al. v. *TATE, et al.*

The complaint in *COPPAR* v. *Tate*[5], was filed on September 3, 1970 following the most difficult summer for Philadelphians since the City was torn by urban riots in 1964. The tensions of the summer of 1970 culminated in late August when the events directly leading to the COPPAR suit occurred.

On August 29, a man walked into a Philadelphia Police station and shot and killed the desk sergeant, Frank Von Colln. Nearby, on that same evening, another policeman, while sitting in his patrol car, was shot and seriously wounded by a sniper. On August 30, two other policemen were shot and seriously injured when they stopped a suspected stolen car. Adding to the tension produced by these incidents, the Black Panther Party had chosen Philadelphia to be the host city for the "Revolutionary Peoples Constitutional Convention" which was to bring some 6,000 advocates of violent and non-violent political revolution into the City. That convention was scheduled to begin on September 4 and continue through September 7.

Members of the Black Panther Party were suspected by the police of being involved with the shootings of the police officers. On August 31, 1970 the police attempted to search various premises used by the Black Panther

[2] Louise J. Reed incident, 357 F. Supp. at 1300. Anti-Semetic remarks incident, 357 F. Supp. at 1300.

[3] Gerald Goode incident, 357 F. Supp. at 1295-6.

[4] Joseph Reas incident, 357 F. Supp. at 1299-1300.

[5] COPPAR is an acronym for Council of Organizations on Philadelphia Police Accountability and Responsibility.

Party. At one of the premises, the attempt to serve the search warrant was met with gunfire from the persons inside the property. After a brief gunfight with the police, the occupants surrendered, emerged and were strip searched by the policemen on the scene. None of the occupants were injured.

On September 3 the plaintiffs in *COPPAR, et al.* v. *Tate, et al.* filed the complaint initiating their action together with motions for preliminary injunction and temporary restraining order. Defendant-petitioners are James H. J. Tate, former Mayor of the City of Philadelphia, Frank L. Rizzo, former Police Commissioner and Fred T. Corleto, former Managing Director. COPPAR sought to enjoin defendants from interfering in any way with the then immenent "Revolutionary Peoples Constitutional Convention", even in the event of emergency circumstances, and from holding in custody and prosecuting several of the named plaintiffs. COPPAR further sought an order appointing a "special master" as "receiver" for the Police Department.

COPPAR's Complaint recounted the August 29 to September 7 events described above; and, in a somewhat repetitive series of averments, COPPAR accused defendant Rizzo of threatening Philadelphia's black community with genocide[6] and averred conclusory generalities accusing the defendants of implementing within the Police Department a policy of intimidation and harrassment towards black persons solely because of their race.

[6] Typical of these allegations is paragraph 22 where COPPAR avers

> That the defendant Rizzo has openly, brazenly and illegally threatened the physical extermination and acts of genocide against the Black Community. . . . (sic.)

In support of this scandalous matter, COPPAR quoted from a statement regarding the murder of Sergeant Von Colln made by an obviously distraught and justifiably angry Police Commissioner.

Plaintiffs in this action were COPPAR itself, the Black Panther Party, the Southern Christian Leadership Conference, the Young Lords Party, and twenty-one individuals. On defendants' motion the Black Panther Party and the Young Lords Party were dismissed for failure to comply with discovery orders of the District Court. 357 F. Supp. at 1319. Of the twenty individual plaintiffs, only one, Mary Rouse, presented any testimony. She did not testify to having personally suffered any harrassment or intimidation at the hands of the Police Department or that any such activity was ever directed against her. Of the group plaintiffs, COPPAR testified in the persons of Mary Rouse and Floyd Platten. They likewise did not testify to having suffered any harrassment or intimidation at the hands of the Police Department. Their testimony consisted of second-hand descriptions of incidents of alleged police misconduct which precipitated complaints to COPPAR.

The District Court refused to enter the temporary restraining order prayed for, but did issue an order enjoining police officers from violating the constitutional rights of the plaintiff class, thus merely enjoining the police from performing their job improperly.

The "Revolutionary Peoples Constitutional Convention" came and went without any serious incidents involving the Police Department or any of the defendants. On September 21 and October 21 the defendants filed motions for dismissal asserting that since the convention had passed without incident, the bulk of the lawsuit was moot, that COPPAR otherwise failed to state the cause of action since plaintiffs were not entitled to having their prosecutions enjoined and since a federal district court lacked the power to appoint the requested receiver, and that, excluding those averments mooted by the uneventful convention, the remaining averments were so broad and

conclusory as to fail to state a cause of action.[7] The District Court did recognize the prejudice to defendants in attempting to defend a case in which the complaint stated no facts. The Court required COPPAR to file with the Court and serve upon defendants memoranda of witnesses and incidents. COPPAR filed several of these memoranda which gave the name and address of a witness and the briefest possible description of some sixty-nine incidents. The District Court later took the position that these memoranda were sufficient to obviate the necessity to dismiss the complaint. 357 F. Supp. at 1319.

The District Court heard evidence of 28 incidents of alleged police misconduct. The Court determined that in four incidents[8], there was no police misconduct. With regard to one incident[9], the Court was satisfied that defendants had remedied whatever problems had existed. The Court specifically critized the conduct of police officers in two incidents.[10] In the remaining incidents, the Court made its findings without editorial comment on the conduct of either the citizens or the police officers involved.

After reviewing the evidence in both cases the Court concluded that violations of the legal and constitutional rights of citizens are committed by only a small percentage of police officers, but also that such violations do occur too frequently to be dismissed as rare instances. 357 F. Supp. at 1318. The Court also concluded that the evidence did not disclose any departmental policy to violate rights of citizens nor any policy of racial bias or

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[7] The District Court ultimately conceded, at least on those last grounds, that the Motion to Dismiss was probably meritorious. 357 F. Supp. at 1319.

[8] Charles Blackman incident, 357 F. Supp. at 1301; Dennis Holland incident, 357 F. Supp. at 1289; Adalberto Molinas incident, 357 F. Supp. at 1306; Fred Brooks incident, 357 F. Supp. at 1310.

[9] Robert Nicholas incident, 357 F. Supp. at 1301.

[10] Locke and Perry incident, 357 F. Supp. at 1310; Brown and Smalley incident, 357 F. Supp. at 1315.

discriminatory enforcement on racial lines. 357 F. Supp. at 1318, 1319. The Court concluded that the existing police procedures for handling citizen complaints of police misconduct were inadequate, 357 F. Supp. at 1318, but also that the plaintiff class had no constitutional right to have those procedures improved. 357 F. Supp. at 1321.

The trial of the *Goode* case was completed by November 30, 1970, and the trial of the *COPPAR* case concluded on March 9, 1971. Approximately two years later, on March 15, 1973, the District Court entered an Opinion and Order for both cases consolidating them for purposes of relief. 357 F. Supp. at 1290. The Opinion reviewed the evidence presented in both cases and held that the police procedures for handling citizen complaints of police misconduct were insufficient and ordered defendant to submit a revised program. That program was to be in accordance with the views of the Court as expressed in its Opinion.

Defendants prepared and submitted a revised program, thereby precipitating counter proposals and a series of settlement discussions which continued until September, 1973. Nevertheless the defendants informed the Court and opposing counsel that they reserved the right to object to the grant of any relief. On October 5, 1973 the District Court issued its "Final Judgment" (Appendix, p. 20a) which requires inter alia, that the Police Commissioner of Philadelphia promulgate, as an intra-departmental directive, procedures for the receipt, investigation and disposition of civilian complaints of police misconduct. The directive was to be in the form of a sample directive which was appended to the Court's order.

A timely appeal was taken from the Final Judgments of the District Court in both the *Goode* and *COPPAR* cases as well as from the Order of the Court which granted attorneys' fees in each case. On November 1, 1974

the Third Circuit Court, per the Honorable Joseph F. Weis, Jr., affirmed the District Court as to the injunctive relief granted but vacated and remanded the award of counsel fees.

Notwithstanding the specific findings of the District Court that only a small percentage of Philadelphia policemen violated the legal and constitutional rights of citizens and that there was no departmental policy of racial bias or to deny citizens their legal and constitutional rights, the Circuit Court held that the District Court's remedy was proper because the District Court also found that incidents of police misconduct on the part of that small percentage of officers could not be dismissed as rare isolated instances, and that the new procedures had the potential for prevention of future misconduct. Furthermore the Circuit Court agreed with the District Court that plaintiffs were not entitled to revised procedures as a matter of constitutional right, and recognized that the District Court's procedures were simply the Court's idea of a wiser method of police administration.

Defendant-petitioner filed a timely petition for rehearing which was denied by the Court en banc on December 6, 1974.

REASONS FOR GRANTING THE WRIT

Point 1

In assuming control over a major aspect of the operations of the Philadelphia Police Department, in requiring the issuance of its own intra-departmental procedural directives and in maintaining a continuing judicial surveillance over the operations of the department, the lower court abused its injunctive power.

As the Circuit Court recognized, this controversy centers on a balancing between the functions of a Federal District Court and a municipal police department. Based on a record which presents some thirty-seven incidents of alleged police misconduct (many of which evidence no improper conduct) over more than a one and one-half year period, the District Court concluded that it was necessary to issue a mandatory injunction requiring the Police Commissioner to implement the Court's procedures for the receipt, investigation and adjudication of citizen complaints of police misconduct. The District Court's directive requires that all complaints of police misconduct be investigated (Appendix, p. 26a), specifies the method of investigation (Appendix, p. 27a-28a); and, in cases where investigation discloses factual dispute, requires a public adversary hearing on the merits of the charge.

Although the Circuit Court agreed that it would be improper for a federal district court to inject itself into the day to day operations of the Police Department, the Circuit Court held that in this case the District Court had not done so. Although defendants do not agree that the propriety of the District Court's intrusion turns on whether the intrusion is on a day to day basis or not,[11]

[11] It should be noted that in its Judgment the District Court retained jurisdiction and required defendants to maintain statistics in order to effect a continuing regulatory surveillance over the performance of the Police Department.

the plain intent of the Court's directive is to control those day to day operations of the Police Department relating to the receipt, investigation and disposition of citizen complaints of police misconduct. Moreover by promulgating its own directive without regard to such mundane but nevertheless important administrative considerations as availability and deployment of personnel, the Court's Order seriously affects the entire police function.

The procedures proposed by the District Court require the investigation of *all* complaints regarding the conduct of police officers. (Appendix, p. 26a). Except for complaints determined to be frivolous, each complaint must be fully investigated. To be acceptable to the Court, the investigation must include interviews with the complainant and/or victim, the defendant police officer, all other officers involved, all officers witnessing the occurrence, all other witnesses and possible witnesses, and a reviewing and analysis of all physical evidence. (Appendix, p. 27a). The investigation must be completed in forty-five days. (Appendix, p. 28a). In all cases where the investigation produces a factual dispute regarding the occurrence, the police must convene a quasi-judicial tribunal for the purpose of conducting a public trial of an adversary nature between the complainant and the police officer. (Appendix, p. 33a). These procedures apply only to complaints of citizens which, if taken as true, *do not* allege that the police officer has committed a crime. Complaints alleging a crime are processed in accordance with another set of procedures. (Appendix, p. 32a).

Despite disclaimers of both the Circuit Court (Appendix, p. 11a) and the District Court, 357 F. Supp. at 1321, the procedures established by the District Court will severely interfere with the Police Department's primary purpose to prevent and detect crime. In Philadelphia, a city of two million people with the distressingly high

crime rate common to virtually all of this nation's large cities, the sheer volume of crime often precludes the type of thorough investigation which the district court requires, under pain of contempt of court, for matters which are not crimes. The Police Commissioner, otherwise responsible for deployment of police personnel, must, under the threat of contempt, assign his investigators in such a manner as to insure that all non-criminal complaints regarding police conduct are thoroughly investigated within the forty-five day limit set by the Court. These complaints must be investigated regardless of the number of crimes remaining unsolved, regardless of the number of crimes to be investigated and regardless of the availability of investigatory personnel.

Even in properly performing his duty, the police officer of necessity constitutes an annoyance to persons breaking the law and to persons whom the officer has probable cause to believe are breaking the law. It is safe to say that virtually every otherwise law abiding person has felt such annoyance on receiving a traffic ticket. Yet complaints arising out of petty annoyance must be investigated and can only be dismissed as frivolous when the investigation demonstates that the complaint and the evidence can in no way be interpreted as constituting improper conduct. (Appendix, p. 31a). In a city of two million people, in a metropolitan area of five million people, the number of complaints of improper conduct on the part of police can be expected to be large. To be sure some will allege grievous misconduct and even criminal conduct on the part of a police officer, but the overwhelming majority will allege non-criminal conduct in the nature of a personal affront to the complainant.

On a scale of threats to society, police incivility, however distasteful, must be ranked far below homicide, rape, arson, assault and battery and myriad other crimes against

the person and property. The unfortunate result of the District Court's intrusion into management of departmental policy and procedure will be that, in a city which has already experienced more than twenty murders in the first eight days of 1975, your petitioners will be required to thoroughly investigate accusations of rudeness on the part of a police officer or be held in contempt for failure to do so.

It is fundamentally unwise for a federal district judge to assume the local executive's responsibility for administration of the community's police department, even assuming that the judge possesses the necessary competence to do so. Basic decisions, such as setting priorities for allocation of investigatory personnel, cannot be made by the police administrator. Rather, such decisions are to be made by the court or with the court's approbation after petition and hearing. Police administration by court order, in the context of an adversary proceeding, ill serves the public interest.

The Circuit Court decided that the injunctive relief was proper and held that the revisions in the disciplinary procedures were justified because they appeared to have the potential for prevention of future police misconduct. The Circuit Court's legal reasoning has been rejected by this Court. *O'Shea* v. *Littleton,* 414 U.S. 488 (1974); *Gilligan* v. *Morgan,* 413 U.S. 1 (1973).

In *O'Shea* v. *Littleton,* plaintiffs alleged that certain county judicial officers had engaged in a pattern and practice of violating the constitutional rights of the plaintiff class. Plaintiffs sought "an injunction aimed at controlling or preventing the occurrence of specific events that might take place in the course of future state criminal trials." 414 U.S. at 500. The District Court dismissed the complaint, but the Seventh Circuit Court reversed ruling that in the event plaintiffs proved their allega-

tions, the District Court should "fashion appropriate injunctive relief to prevent petitioners [defendants] from depriving others of their constitutional rights in the course of their carrying out their judicial duties in the future." 414 U.S. at 492-3. As is true here, the Seventh Circuit Court disclaimed any intention of requiring the District Court to sit in day-to-day supervision of the defendant judicial officers, but suggested that the District Court require periodic reports from defendants on their judicial activities. This Court reversed and held that the complaint was properly dismissed. This Court disapproved of the injuction envisioned by the Circuit Court which would have resulted in "nothing less than an ongoing federal audit of state criminal proceedings," 414 U.S. at 500; it would have run counter to fundamental principles of federalism and unnecessarily and unwisely involved the equitable powers of the federal courts, particularly the power to hold a violator of an injunction order in contempt of court, in the state criminal process. 414 U.S. at 501-2.

In *Gilligan* v. *Morgan* this Court considered a complaint which asked a federal district court to evaluate the training, weaponry and orders of the Ohio National Guard and to assume a continuing regulatory jurisdiction over the Guard. The District Court dismissed the complaint, but the Sixth Circuit Court reversed in part and remanded the case to the District Court with instructions to determine if there was a pattern of training, weaponry and/or orders which make inevitable the unnecessary use of fatal force in suppressing civilian disorders. *Morgan* v. *Rhodes,* 456 F. 2d 608 (1972). This Court held that the case did not present a justiciable controversy. Although the clear cut federal separation of power issue present in *Gilligan* is not involved in the instant case, the fundamental issues are identical in both cases. Here the District Court has

ordered changes in police training, has rewritten departmental orders, has retained jurisdiction over the case and has required the police department to keep statistics in order that a continuing judicial serveillance can be maintained. The control over police operations which the District Court has assumed is precisely what this Court in *Gilligan* found to be inappropriate for a district court to undertake. See also *Calvin* v. *Conlisk,* 367 F. Supp. 476 (N.D. Ill. 1973); *Build of Buffalo, Inc.* v. *Sedita,* 441 F. 2d 284 (2nd Cir., 1971).

In both *Allee* v. *Medrano,* — U.S. —, 40 L. Ed. 2d 566 (1974) and *Hague* v. *C.I.O.,* 307 U.S. 496 (1939), this Court affirmed injunctions against deliberate governmental policies of using law enforcement personnel to violate the constitutional rights of citizens. Both cases involved efforts by law enforcement officials to crush nascent labor unions. In *Allee,* notwithstanding the affirmance of the grant of injunctive relief, this Court was constrained to point out:

> On its face the injunction does not more than require the police to abide by constitutional requirements; and there is no contention that this decree would interfere with law enforcement by restraining the police from engaging in conduct that would be otherwise lawful. 40 L. Ed. 2d at 579-81.

In *Hague,* this Court vacated those portions of the District Court's injunction which purported to enumerate conditions under which the defendant law enforcement officials could properly act. This Court held that the courts lacked the power to effectively "rewrite" ordinances. 307 U. S. at 518.

Here, in a case where the lower court specifically refused to find any departmental policy to violate anyone's constitutional rights, where there was no evidence

or finding of any unconstitutional conduct on the part of any defendant and where both the District Court and the Circuit Court held that plaintiffs had no constitutional entitlement to revision of police disciplinary procedures, the Circuit Court affirmed the grant of injunctive relief which goes far beyond merely requiring the police to abide by the Constitution, which will interfere, both directly and indirectly, with the primary police function of law enforcement and which rewrites departmental regulations in accordance with the District Court's concepts of more enlightened procedures for police administration.

In affirming the District Court's grant of relief, the Circuit Court authorized that Court to stray far beyond the bounds of judicial power, experience and competence. The Circuit Court ignored or overlooked the decisions of this Court which your petitioners submit preclude the type of injunctive relief granted here. To remedy these errors, petitioners respectfully request this Court to grant this petition for certiorari.

Point 2

The legal remedies provided by the civil rights acts and state tort law obviate the necessity for equitable relief.

It is hornbook law that the basic prerequisites for the issuance of equitable relief are that plaintiffs stand to suffer substantial and immediate irreparable injury and that plaintiffs have no adequate remedy at law. *O'Shea* v. *Littleton, supra* at 502. Although the District Court and the Circuit Court determined otherwise, the injunctive relief at issue here was granted in spite of numerous adequate legal remedies. The District Court's finding of inadequate remedies was twofold: first, the Court found for various reasons that the Police Department's existing internal disciplinary proceedings were inadequate, and

second, the Court found that the existing federal and state legal remedies were inadequate. In affirming the District Court, the Circuit Court considered only the finding of inadequacy in police disciplinary procedure and completely ignored the presence of adequate federal and state legal remedies.

The District Court found that the existing disciplinary procedures were inadequate because, inter alia, the procedures were geared to handle violation of police regulations but did not cover specific violations of constitutional rights, that the "chain of command" basis for handling complaints had the effect of discouraging them, and that there was no opportunity for the complainant to present his case to an objective tribunal which would decide his case and inform him of a decision. District Court, in reality, found that the police disciplinary procedures were inadequate when measured on a yardstick of the Court's own creation. No one has ever intimated that the police disciplinary procedures were geared to handle anything other than infractions of police regulations or that the police were not a quasi-military organization which operates in accordance with a basic command structure. Furthermore, the police have absolutely no duty to provide a quasi-judicial tribunal to conduct adversary hearings for violations of constitutional rights. Neither the United States Constitution (as is conceded by both the Circuit and the District Courts), nor any Federal statute, nor the Pennsylvania Constitution, nor any Pennsylvania statute, nor the Philadelphia Home Rule Charter nor any ordinance of the City of Philadelphia purports to impose such a quasi-judicial function on the police department. Thus, in making its finding that the disciplinary procedures were inadequate, the District Court supplied itself with its own ultimate conclusion; the Court did no more than place the proverbial rabbit in the hat.

The existing police disciplinary standards were never intended to meet the standards set by the Court, but they are fully adequate for the purpose for which they were designed—to handle infractions of police regulations.

The District Court found that existing federal and state legal remedies were inadequate because they are expensive, time-consuming, not readily available and not notably successful.[12] 357 F. Supp. at 1319. This finding is tantamount to finding that the Civil Rights Act of 1871, 42 U.S.C. § 1983, is inadequate for the very purpose for which it was enacted. The purpose of that Act is to provide a private remedy for violations, under color of state law, of federally protected rights. Additionally, a similar implicit finding of inadequacy is made regarding Pennsylvania law and access to Pennsylvania courts.

Questions regarding the effectiveness of federal legislation are for Congress, not for the courts. Questions regarding the effectiveness of state legislation are for the state legislatures, not for the federal courts. The District Court's dissatisfaction with existing federal and state legal remedies in no way vests the Court with the power to create a quasi-judicial system within a municipal police department in order to fill what it perceives as gaps in the federal and state schemes.

> "It is not a function of the Courts to speculate as to whether the statute is unwise or whether the evil sought to be remedied could better have been regulated in some other manner."

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[12] The criticism that civil suits are not notably successful is most puzzling. In our judicial system, a judgment for a defendant policeman is just as final and conclusive as it is for any other defendant; it is res judicata as to liability. A criticism based on a lack of success for plaintiffs in suits against police officers seems to indicate an **a priori** judgment that defendant police officers are probably liable, even if they have not been so judged.

Mourning v. *Family Publication Service,* 411 U.S. 356, 378 (1973); see also, *Daniel* v. *Family Security Life Ins. Co.,* 336 U.S. 220, 224 (1949); *Olsen* v. *Nebraska,* 313 U.S. 236, 246 (1941). Moreover, to the extent that complaints of police misconduct allege violations of federally protected rights, the Court's procedures are largely duplicative of the existing legal remedies, and serve to give plaintiffs in court actions an opportunity to have a preliminary trial of their case in the police department prior to airing their case for damages in court.

As this Court recognized with regard to military personnel in *Gilligan* v. *Morgan,* 413 U.S. at 11-12, and judicial officers in *O'Shea* v. *Littleton,* 414 U.S. at 503, specific acts of misconduct on the part of individual police officers are certainly reviewable and punishable in the federal as well as the state courts. In *O'Shea* this Court specifically held that the presence of such remedies constituted adequate remedies at law which precluded injunctive relief. Considering the availability of other avenues of relief for violation of federal and state rights by police officers and the abrasive, unmanageable and unwise intrusion into police administration which the injunctive relief represents, petitioners respectfully submit that the Circuit Court of Appeals erred in affirming the injunctive relief granted by the District Court.

CONCLUSION

For the foregoing reasons, your petitioners respectfully submit that a Writ of Certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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CERTIFICATION OF SERVICE

I hereby certify that on this 23rd day of January 1975, three copies of the Petition for Writ of Certiorari were hand delivered to William Lee Akers, Esquire, 805 One East Penn Square Building, Philadelphia, Pennsylvania 19107, Counsel for Respondents, and to Peter Hearn, Esquire, Pepper, Hamilton & Scheetz, 20th Floor, the Fidelity Building, Philadelphia, Pennsylvania 19109, Counsel for Respondents. I further certify that all parties required to be served have been served.

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APPENDIX

Appendix

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 73-2023/24/25
Nos. 73-2077/78/79

GERALD G. GOODE, ET AL., ETC.,
Appellants in 73-2023

v.

FRANK L. RIZZO, ETC., ET AL.,
Appellants in 73-2024/25

COUNCIL OF ORGANIZATIONS ON PHILADELPHIA POLICE ACCOUNTABILITY, ETC., ET AL.,

v.

HON. JAMES H. J. TATE, ET AL.,
FRANK L. RIZZO, ET AL.,
Appellants in 73-2077/78

COUNCIL OF ORGANIZATIONS, ETC.,
Appellant in 73-2079

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

(D.C. Nos. 70-491 and 70-2430)

Argued June 10, 1974

Before: STALEY, GIBBONS and WEIS, *Circuit Judges*

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OPINION OF THE COURT

(Filed November 1, 1974)

WEIS, *Circuit Judge.*

A delicate balancing between the functions of the federal district court and the police department of the City of Philadelphia is the essence of the controversy presented in this appeal. A finding by the trial court that a modification of internal procedures for handling citizens' complaints is an adequate remedy for preventing future misconduct by a minority of police officers is sufficiently supported by the record. But, an assessment of counsel fees in this § 1983 case must be remanded for further proceedings.

Two separate cases were filed by different plaintiffs, all purporting, however, to represent essentially the same class of persons.[1] The defendants also were generally the same, being the Mayor and other city and police officials.[2] The two cases were consolidated by the district judge for

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[1] The district court ordered that the **Goode** case could be maintained as a class action on behalf of all residents of the City of Philadelphia and an included class of all black residents of Philadelphia. The complaint in the **COPPAR** case alleged the class to be composed of the plaintiff and black and white persons in the City of Philadelphia expressing political views contrary to defendants and advocating police responsibility to the community. **COPPAR** is an acronym for the Council of Organization on Philadelphia Police Accountabiltiy and Responsibility.

[2] The original complaint in the **Goode** case named the following defendants:

James H. J. Tate, Mayor, City of Philadelphia
Fred T. Corletto, Managing Director, City of Philadelphia
Frank L. Rizzo, Commissioner of Police, City of Philadelphia
Robert G. Selfridge, Deputy Commissioner of Police, City of Phila.
William Murphy, Captain, Police Department, City of Philadelphia

By Order of Court, dated September 11, 1973, the following defendants were substituted:

Frank L. Rizzo, Mayor, City of Philadelphia
Hillel S. Levinson, Managing Director, City of Philadelphia

final disposition, and we therefore, as did he, treat this litigation as unitary.

The plaintiff produced evidence which the district court found adequate to establish a pattern of violations of the legal and constitutional rights of citizens by Philadelphia police, particularly in the areas of "arrest for investigation, charges of resisting arrest when the arrest was initially unlawful, extreme over-reaction to actual or reported assaults upon policemen and in the treatment of people who question or criticize police activity in particular instances."

The testimony was presented by victims of police misconduct or witnesses to it and encompassed more than thirty-five incidents, not all of which were found to be examples of improper activity on the part of the officers. The district judge summarized each incident in his voluminous findings of fact and concluded that, while misconduct is attributable to only a small percentage of the members of the police force, the violations take place with such frequency that "they cannot be dismissed as rare isolated incidents; and that little or nothing is done by the city authorities to punish such infractions, or to prevent their recurrence."[3]

The existing police procedures for processing and adjudicating citizen complaints and for enforcing police dis-

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Continued

Joseph F. O'Neill, Commissioner of Police, City of Philadelphia
Morton B. Solomon, Deputy Commissioner of Police, City of Phila.
William Murphy, Captain, Police Department, City of Philadelphia

In **COPPAR**, the original named defendants were:

Honorable James H. J. Tate; Frank L. Rizzo; Fred T. Corletto; Arlen Spector

The record does not reveal any substitution of the named defendants, despite the court's order of March 14, 1973, directing the plaintiffs to make appropriate amendments to the caption of the case to reflect changes in personnel.

[3] **COPPAR v. Rizzo**, 357 F. Supp. 1289, 1319 (E.D. Pa. 1973).

cipline were evaluated, the court finding that the arrangements then existing were totally inadequate because:

1. The procedures were geared to handle infractions of police regulations but these rules were not framed to cover specific violations of citizens' constitutional rights;
2. Complaints were handled on a "chain of command" basis which discouraged civilian complaints;
3. There was no adequate opportunity for the complainant to present his case to an objective tribunal;
4. The outcome of the proceedings were not disclosed; and
5. There was a tendency to minimize consequences of proven police misconduct.

Although the plaintiffs has asked for a sweeping equitable decree, including the appointment of a "receiver" to supervise the police department and the civilian review of police activity, the trial court concluded that a much more limited form of relief was appropriate. It required the defendants to revise the procedures within the police department for processing citizens' complaints against the police, including such matters as:

1. Preparing and distributing appropriate forms for the submission of complaints;
2. Prompt and adequate investigation;
3. Adjudication by an impartial body insulated from command pressures; and
4. Fair opportunity for both complainants and police officers to present their cases, followed by notification to the parties of the outcome.

The court stated that its guidelines pose no threat to vigorous law enforcement, are consistent with generally recognized minimal standards, and impose no substantial burden on the police department. The district court also concluded that an award of counsel fees and expenses to the plaintiffs was justified and assessed sums totalling $39,417.58 against "the defendants."

The defendants appeal from the judgments in all respects. The plaintiffs COPPAR and Goode cross-appeal on the ground that the grant of counsel fees is inadequate, and COPPAR cross-appeals from the denial of its request for the appointment of a receiver.

I.

We first consider the defendants' challenge to the plaintiffs' standing to maintain this suit on the ground that the requirements set out in *O'Shea* v. *Littleton,* 414 U.S. 488 (1974), have not been met. In that case the Supreme Court found a lack of standing when the complaint did not allege injury on the part of any of the named plantiffs and no class determination had been made. But, a few months later, in *Allee* v. *Medrano,* — U.S. —, 42 U.S.L.W. 4736, 4740 n.10 (May 21, 1974), the Court noted, ". . . Moreover as to this portion of the decree, directed at police misconduct generally rather than to any particular state statute, named plaintiffs intimidated by misconduct may represent all others in the class of those similarly abused . . ."

In the case *sub judice,* the named plaintiff, Gerald Goode, alleged in the complaint and established at the trial an incident where he was the victim of an illegal arrest and beating by Philadelphia police.[4] Herbert Brown, another named plaintiff, alleged an illegal beating by the

police which presented an arguably constitutional violation.

While the COPPAR complaint is loosely drawn, a fair reading shows that the individual plaintiffs allege a series of illegal arrests and unauthorized entry into their homes by police officers. Many of the named plaintiffs did not testify at the hearing. However, at the direction of the trial judge at a pretrial hearing, a list of other names and a description of the incidents in which they were involved were filed with the court. Although somewhat informal, this may properly be considered an amendment to the complaint and was so treated by the district court. Many of these additional parties testified in the district court.

Although more precision and attention to the appropriate procedural rules by the parties would have been helpful, from a practical standpoint we conclude that the requisites for standing have been met.

There is a distinction too between the underlying situation in the *O'Shea* case and the instant litigation. In *O'Shea* v. *Littleton, supra,* the Court was concerned with the fact that the injunction sought by the plaintiffs would affect events which would take place during state criminal trials, thus violating the principles of *Younger* v. *Harris,* 401 U.S. 37 (1971). Here, on the other hand, the plaintiffs were concerned with alleged police practices which would not come to the attention of a state court in most instances because prosecutions were not instituted or were dismissed at a very early stage. Furthermore, unlike the *O'Shea* litigation, the Court did determine the applicable

[4] In a suit for damage in the state court against the individual police officers and the City of Philadelphia, **Goode** was given a judgment by a board of arbitration against the City of Philadelphia although no finding was entered against the policemen personally. That case was appealed to the Court of Common Pleas of Philadelphia County.

class to be all the citizens of Philadelphia and an included class of all black residents of the City.[5]

II.

The trial court's conclusion that there were widespread violations of constitutional rights through police misconduct is attacked by the defendants as being inconsistent with the finding that only a small percentage of the officers on the force are accountable for these actions. The defendants also assert that the number of separate incidents presented to the court formed an inadequate basis for a finding of a pattern or practice.

There is no mathematical formula which can be of assistance in determining how many witnesses or how many incidents are needed to establish a pattern of conduct by any group in a community. The trial judge must work with the material that is presented to him and must decide whether sufficient credible data are available to reach a conclusion. It is his responsibility primarily, and an appellate court must accord great deference to that fact finding process. In a case of this nature, too, we are conscious

[5] The designation of class was granted by the district court under the provisions of Rule 23(b)(2), which reads:

> "An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition: . . . (2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole . . ."

The defendants have not questioned the class designation on the basis of size or definition, and therefore, we do not consider those elements. **Cf. Lewis v. Kugler**, 446 F.2d 1343 (3d Cir. 1971).

We also note that the defendants in the case of **Alexander v. Rizzo**, Civil Action No. 70-992 (E.D. Pa. 1972), entered into a consent decree in which they stipulated that the final order was "for the benefit of every member of the class of plaintiffs referred to in the Complaint . . ." The **Alexander** complaint reveals that the action was brought on behalf of all black residents of the City of Philadelphia. (Complaint, para. 5)

of the weight which must be given to the findings of a trial judge which are dependent upon and interwoven with intensely local conditions and circumstances. *Mayor of Philadelphia* v. *Educational Equality League,* 415 U.S. 605 (1974); *White* v. *Regester,* 412 U.S. 755 (1973).[6]

We have noted also, as did the district judge, that the police officials of Philadelphia entered into a consent decree in *Alexander* v. *Rizzo, supra,*[7] agreeing to modify the procedures to be followed when a person is to be interrogated in the course of a criminal investigation. Compliance with that decree will serve to prevent recurrence of some of the types of illegal conduct about which the plaintiffs here complained. We need not consider, nor did the district court, whether this consent decree has any collateral estoppel effect as to the existence of a pattern of misconduct by police officers. Nevertheless, it was a factor to which the trial judge could give some weight in arriving at his findings.

Our review of the lengthy record in this case in addition to the contents of the appendix submitted by the parties does not reveal findings of fact which are clearly erroneous or conclusions which are not supported by reasonable interpretation of those underlying facts. *See* Fed. R. Civ. P. 52; Wright & Miller, Federal Practice and Procedure: Civil §§ 2585, 2587.

We conclude that there was an adequate evidentiary record to support the findings of the district court that violations of constitutional rights by the Philadelphia police occurred in an unacceptably high number of instances and that in the absence of change in procedures such violations are likely to recur.

[6] It is not inappropriate to note that the same district judge decided the case of **Hughes v. Rizzo,** 282 F. Supp. 881 (E.D. Pa. 1968), where an injunction against alleged police misconduct was denied. That same judge is presently retaining jurisdiction of the case of **Commonwealth of Pennsylvania v. Joseph F. O'Neill, et al.,** Civil Action No. 70-3500 (E.D. Pa.), involving the hiring practices of the Philadelphia police.

[7] **See** note 5, **supra.**

That we do not reverse the district court's conclusions, however, does not mean that we are unaware of the idealism and dedication of the vast majority of police officers. Their duties are difficult and dangerous, and the work which they perform is too often unheralded and unappreciated. Even a casual review of the record of the citations for bravery awarded to some of the offending officers in this case cannot but impress the reader with the fact that often the most routine assignment may suddenly turn into one involving death or serious injury to the policemen. And yet, we place upon these officers the additional burdens of almost superhuman patience and forbearance in the face of hostile and provocative conduct and insist that they accord full legal protection and respect to those who would deny similar treatment to the officers. But such high standards must be maintained because of the tremendous importance of police work to the maintenance of an orderly society without which no rights can survive. We would fail in the respect which we owe the vast majority of policemen should we not fail to correct the derelictions of the few who do not meet the difficult standards which the community requires.

III.

The district court's order granting relief is limited and moderate in tone indicating its faith in the ability and willingness of the police department to investigate and correct the transgressions of its errant members. Despite the assertions of the defendants, the court is not thrusting itself into the day to day operations of the police department—a situation which we agree would be inadvisable

and inappropriate in the circumstances of this case. *Cf. Lankford* v. *Gelston,* 364 F.2d 197 (4th Cir. 1966). Indeed, the procedures which the district court required be implemented by the police department for the receipt, investigation, and disposition of civilian complaints are fully in accord with the American Bar Association Standards Relating to the Urban Police Function, which were unanimously approved by the Executive Committee of the International Chiefs of Police in December, 1972.

We agree with the district court in its refusal to appoint a "receiver" for the police department as requested by COPPAR. Whether such action might ever be necessary in the most extreme circumstances, we need not here consider because the factual situation in this case would not warrant such action. *See Build of Buffalo, Inc.* v. *Sedita,* 441 F.2d 284 (2d Cir. 1971).

We emphasize that the district judge did not find that the plaintiffs were entitled to a change in the disciplinary procedures of the police department as a matter of constitutional right. The decision on the necessity for relief was based upon violations of constitutional rights which had occurred and which he found would be recurring. It was only in the context of the proper remedy to be utilized that the district court reviewed the existing procedures and found them inadequate. The revisions were one of the forms of relief available and were ordered because they appeared to have the potential for prevention of future police misconduct. *Lewis* v. *Kugler, supra. See also The Federal Injunction as a Remedy for Unconstitutional Police Conduct,* 78 YALE L.J. 143 (1968); *Injunctive Relief for Violations of Constitutional Rights By the Police,* 45 COLO. L. REV. 91 (1973).

IV.

While we find no error in the injunctive relief decreed in this case, we do not believe that the record adequately explains the award of counsel fees to the plaintiffs.

The district court filed an order as follows:

"1. That the defendants shall pay to the plaintiffs in the *Goode* case, Civil Action No. 70-491, counsel fees in the sum of $25,000, plus disbursements and costs in the sum of $4,167.58.

"2. That the defendants shall pay to the plaintiffs in the *COPPAR* case, Civil Action No. 70-2430, counsel fees in the sum of $10,000, plus disbursements and costs in the sum of $250."

The accompanying memorandum recited that the court's discretion was exercised in favor of the award of counsel fees because "[t]he cases were brought for the vindication of constitutional rights, significant violations were established, and the plaintiffs succeeded in obtaining relief which should prove beneficial to all of the citizens of Philadelphia." The court also noted that the parties had been unable to reach an amicable agreement, even after its order setting out guidelines had been filed, and that the results achieved could not have occurred without the need for litigation. Nevertheless, the memorandum concluded that while plaintiffs' counsel had performed a valuable public service,[8] punitive measures were not called for. The memorandum and orders are ambiguous and leave us in doubt as to the basis on which the court exercised its discretion and by whom the payments were to be made.

Even if statutory authority is lacking, in the exercise of their equitable powers federal courts may award attor-

[8] In the **Goode** case, the court remarked that the efforts of plaintiffs' counsel were more nearly successful and their efforts were more directly devoted to attempting to obtain a rational solution but in the **COPPAR** litigation the plaintiffs were "somewhat less sensitive to the true public interest" and were less inclined toward an amicable settlement along the lines ultimately set out by the court.

neys' fees when the interest of justice so requires. *Hall* v. *Cole,* 412 U.S. 1 (1973). Although the rule is broadly stated, in application the power is generally exercised in three categories:

1. Where there has been bad faith, vexation, or oppression. In this class of cases, the punitive aspects predominate. *See, e.g., Newman* v. *Piggie Park Enterprises,* 390 U.S. 400 (1968); *Monroe* v. *Board of Commissioners of City of Jackson,* 453 F.2d 259 (6th Cir. 1972).
2. Where a common fund has been created, or closely analogous to this, where a definable class benefits from the litigation and an award enables the court to spread the expense among all who benefit. *E.g., Mills* v. *Electric Auto-Lite Co.,* 396 U.S. 375 (1970). *Cf. Brewer* v. *School Board of City of Norfolk,* 456 F.2d 943 (4th Cir.), *cert. denied* 406 U.S. 933, *sub nom.* 409 U.S. 893 (1972).
3. Where the private attorney general theory may have application—that is, where the litigation was instituted to vindicate a policy granted a high priority by a congressional action. *See, e.g., Lee* v. *Southern Home Sites Corp.,* 444 F.2d 143 (5th Cir. 1971).[9]

However, the equitable power may be circumscribed by Congress. *Hall* v. *Cole, supra.*

[9] The Supreme Court expressly declined to rule on this theory in **Hall v. Cole, supra,** although it discussed it in **Newman v. Piggie Park Enterprises, supra,** where the Civil Rights Act of 1964, 42 U.S.C. § 2000a-3 (b) permitted an award of counsel fees in the court's discretion. **See also Bradley v. Richmond School Board,** ___ U.S. ___, 42 U.S.L.W. 4703, 4710 (May 15, 1974), where the court noted the high priority particularly accorded desegregation matters. In **Northcross v. Memphis Board of Education,** 412 U.S. 427 (1973), the Court expressly declined to consider whether and under what circumstances an award of attorney's fees might be permissible in § 1983 litigation.

Although 42 U.S.C. § 1983 contains no language dealing with counsel fees, there have been awards under the general equitable power in some cases brought under the terms of the statute. *See Skehan* v. *Board of Trustees of Bloomsburg State College,* ___ F.2d ___ (No. 73-1613, 3d Cir. May 3, 1974, *amended* June 11, 1974), and see the compilation of cases in *Gates* v. *Collier,* 489 F.2d 298 (5th Cir. 1973).[10]

The district court did not articulate the basis which it felt justified an award, and we think it important that this be done. Why the fees should be paid has significance in determining who is liable, and we do not feel that we should engage in speculation as to the district court's rationale.

We have similar difficulty in divining the district court's intentions as to the source of funds to satisfy the awards. There are two obvious alternatives: the defendants personally or the City of Philadelphia. Each choice, however, poses special problems which require examination by the district court, perhaps with additional fact finding for clarification.

Scheuer v. *Rhodes,* ___ U.S. ___, 42 U.S.L.W. 4543 (April 17, 1974), makes clear that officials in the executive department may be personally liable for damages in § 1983 cases. However, a qualified immunity is available as a defense when there is good faith on the part of the defendant. In *Skehan* v. *Board of Trustees, supra,* we held that this immunity would apply to assessments for counsel fees as well as to damages.

[10] Many of the cases fail to distinguish between awards made under §§ 1981, 1982 and 1983 even though these sections are derived from separate statutes and the rationale applicable to § 1982, for example, may not apply to § 1983. **See, e.g., Lee v. Southern Home Sites Corp., supra,** where the court cites the absence of criminal sanctions to enforce § 1982 as one reason to encourage private attorney general actions.

In the exercise of discretion, too, the district court should consider the fact that the defendants apparently did not personally participate in the incidents which led to the necessity of injunctive relief. *Respondent superior* is not applicable in its traditional sense since the defendant officials are not employers. Both subordinates and officials are employees of the governmental unit. *Jennings* v. *Davis,* 476 F.2d 1271 (8th Cir. 1973). In *Bracey* v. *Grenoble,* 494 F.2d 566 (3d Cir. 1974), this court assumed, *arguendo,* that no damages for the actions of a subordinate could be imposed upon a governmental official in the absence of his actual knowledge of, acquiescence in, or participation in the unlawful activity. *See also Vicarious Liability Under § 1983,* 6 IND. L. REV. 509 (1973).

Furthermore, we note that some of "the defendants" were not in office at the time the incidents arose and were substituted as parties only after the lawsuits were close to conclusion.[11] Similarly, some of the defendants who were officials during the period when the incidents occurred were not included among those liable since they were not parties at the time the order was entered.[12]

To summarize then, if it is the intention of the district court to find the defendants personally liable for an award of counsel fees, it will be necessary to consider the issues of:

1. official immunity;
2. vicarious liability; and
3. identification of the individuals liable.

[11] **See note 2 supra.**

[12] The former district attorney of Philadelphia would be liable under this order for a share of the counsel fees awarded the plaintiffs even though no member of the district attorney's staff was in any way involved in the incidents which convinced the court that injunctive relief was required. In **Bauers v. Heisel,** 361 F.2d 581 (3d Cir. 1966), this court held that the district attorney is not liable for damages under § 1983 because of judicial immunity.

Additionally, if it is contemplated that personal liability will be imposed, the equitable basis for making any award will require analysis. For example, the equities involved in a private attorney general or spreading-the-cost theory are less apparent if individuals are being ordered to reimburse the plaintiffs than if a large entity in which all claim membership is to pay the assessment. Correspondingly, the traditional test of obduracy and intransigence may have far more significance if individual liability is involved.[13]

If it is the thought that the City of Philadelphia, although not a party to this litigation, is to be the source of the funds, then other issues must be passed upon by the district court with appropriate assistance from counsel.

Kenosha v. *Bruno,* 412 U.S. 507 (1973), clarified some earlier uncertainty by holding that a city is outside the ambit of § 1983 "for purposes of equitable relief as well as damages" and may not be a named defendant in such a case. *Edelman* v. *Jordan,* 415 U.S. 651 (1974), held that while an injunction could be issued against a state officer, damages or "equitable restitution" could not be imposed when in fact they would come from the state. We held in *Skehan* v. *Board of Trustees, supra,* that the prohibition of the Eleventh Amendment extends to an award of counsel fees from the state treasury, although that would not be so if the payment were to be made by a college which was a subsidiary governmental unit.[14]

[13] In discussing fees, the district court did say that "punitive measures are not called for" and that "no conscious policy of permitting or encouraging widespread violations of constitutional rights by police officers" existed.

[14] The court's opinion noted that a cause of action under 28 U.S.C. § 1331 had been asserted and that therefore it was not significant that the college was not a "person" under § 1983. Since the parties to the litigation **sub judice** argued only § 1983 jurisdiction, we consider only that theory. **Moor v. County**

The district court, therefore, should consider whether under the facts and circumstances present in this case the rationale of *Edelman* as it deals with sovereign immunity should apply to the statutory exclusion granted a city under § 1983.[15]

Note 14 Continued

of Alameda, 411 U.S. 693, 696 n.4 (1973). Convincing proof of the parties' intent is the **COPPAR** motion to add the City of Philadelphia as a defendant on the expectation that the **Moor v. County of Alameda** case, **supra**, which was then pending in the Supreme Court, would result in a county being declared a "person." The motion was not acted upon, and the city is a named defendant in neither case. **Goode** asserted only § 1983 and § 1988 claims. We leave open for district court consideration the question of § 1331 jurisdiction which **COPPAR** alleged. As to whether **Goode** could amend to allege such a jurisdictional ground, **see 28** U.S.C. § 1653. Similarly, whether the City of Philadelphia could or should be joined under § 1331 is not before us, and in view of such problems as the statute of limitations, laches and respondent superior, we do not pass upon it.

[15] There are numerous cases in which counsel fees have been assessed against school boards without any discussion of whether those entities are "persons" under § 1983. The definition of "person" under this specific statute is far from clear, and there are inconsistencies in the case law. Contrast, for example, U.S. **ex rel. Gittlemacker v. County of Philadelphia,** 413 F.2d 84 (3d Cir. 1969), with **Scher v. Board of Education of Town of West Orange,** 424 F.2d 741 (3d Cir. 1970). For a resume of the cases in this circuit demonstrating the problem, **see** Thornberry, **Suing Public Entities Under the Federal Civil Rights Act: Monroe v. Pape Reconsidered,** 43 U. Colo. L. Rev. 105 (1971). The Supreme Court has met the issue only in cases involving cities and counties. **Kenosha v. Bruno, supra, Moor v. County of Alameda, supra,** and **Monroe v. Pape,** 365 U.S. 167 (1961). Curiously, despite the many cases before the Supreme Court in recent years in which school boards were among the named defendants, the issue of whether the board is a "person" has never been decided by the Court. For the view that the "person" exclusion should be narrowly construed in order to carry out the purpose of the Civil Rights Act, **see** Kates and Kouba, **Liability of Public Entities Under Section 1983 of the Civil Rights Act,** 45 S. Cal. L. Rev. 131 (1972).

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Another matter which may be of significance is whether any of the individual defendants would have the power under the city charter or Pennsylvania law to authorize disbursement of funds in this situation. In exercising its discretion to award counsel fees, the district court would no doubt be concerned with the efficacy of its pronouncement.

The issues which would be raised by an award of counsel fees in this case are broad and complex. We believe they should be resolved only upon a record which would clearly specify the grounds upon which the district court relied. Of course, we take no position at this time as to whether fees should be awarded or if so, against whom they should be assessed.

The judgment of the district court will be affirmed as to the injunctive relief granted but will be vacated and remanded as to the award of counsel fees for further proceedings not inconsistent with this opinion.

Appendix

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 70-491

GERALD G. GOODE, et al.

v.

FRANK L. RIZZO, et al.

FINAL JUDGMENT

AND Now, this 5th day of October, 1973, following a trial before the undersigned District Judge wherein the issues were duly tried and a decision rendered.

It is ORDERED and ADJUDED that:

1. Defendant Joseph F. O'Neill, Police Commissioner, shall forthwith promulgate as an intra-departmental directive procedures for the receipts, investigation and disposition of civilian complaints of police misconduct, substantially in the form of the procedures attached to this Order as Appendix "A". Such directive shall, in addition to normal departmental distribution, be posted prominently in a conspicuous position at the reception desk of the Police Administration Building, at all district/unit headquarters, at the Mayor's Office for Information and Complaints, at the reception area of the Philadelphia Commission on Human Relations, and at such other places as the Commissioner may determine to be appropriate for the effective dissemination of information to individuals having contact with Philadelphia police officers.

Copies of the directive shall be maintained in quantity at all of the above locations and shall be provided upon

Appendix

request to any persons either specifically requesting copies of the directive or inquiring generally into the procedures for lodging complaints against police officers.

2. (a) Within fifteen (15) days from the date of this Order, the Philadelphia Police Department shall promulgate a form (Citizen's Complaint Report) for the use of complaining parties in lodging complaints against police officers.

(b) The Citizen's Complaint Report shall designate and provide adequate space for, the name, address and telephone number of the complainant; the name, address and telephone number (if known) of the alleged victim of police misconduct if other than the complainant; the name, badge number or other identifying characteristics of the police officer(s) against whom the complaint is lodged; the date, time and location of the incident giving rise to the complaint; a narrative description of the events giving rise to the complaint; the names, addresses and telephone numbers of other witnesses to the alleged incident (if known); the names, badge numbers, or other identifying characteristics of other Police Department personnel witnessing or involved in the incident giving rise to the complaint; a statement whether the complainant, the alleged victim of police misconduct (if other than the complainant) or any other witness to the alleged incident was questioned, detained, arrested and/or charged with criminal behavior as a result of the events giving rise to the complaint; the name, address and telephone number of any attorney or other representative of the complainant to whom communications concerning the complaint, its investigation and disposition should be addressed in lieu of the complainant (applicable only where the victim of the alleged police misconduct is himself the complainant); a place for the signature of the complainant.

(c) Within five (5) days following receipt of the proposed form by the Court and by the attorneys for plaintiffs herein, the attorneys for plaintiffs shall forward to the Court their comments and alternative suggestions, if any.

(d) Within thirty (30) days from the further Order of this Court approving a form for the receipt of complaints, the Philadelphia Police Department shall cause sufficient copies of the approved Citizen's Complaint Report to be printed and distributed in accordance with the further provisions of this Order.

(e) Sufficient quantities of the Citizen's Complaint Report shall at all times be maintained at the following locations: a designated office within the Police Administration Building; all district/unit headquarters; the Mayor's Office for Information and Complaints; the main office of the Philadelphia Commission on Human Relations; a designated office of the District Attorney's Office

3. Civilian complaints of police misconduct which have been received by the Philadelphia Police Department on or after March 14, 1973, and which have not heretofore been finally disposed of, and all such complaints which may be received between the present date and the date on which an approved Citizen's Complaint Report form is promulgated in accordance with paragraph 2 of this Order, shall be processed in accordance with the procedures attached hereto, notwithstanding the initial unavailability of the official Citizen's Complaint Report form. Any such complaint which has been received since March 14, 1973, and which has heretofore been disposed of shall, upon written request of the complainant made within thirty days after the date on which the official Citizen's Complaint Report forms are available, be reprocessed in

accordance with the procedures attached; and appropriate notices shall be posted (at the locations where the complaint forms are made available pursuant to this Order) giving notice of this right.

4. Within thirty (30) days from the date of this Order, the Philadelphia Police Department shall file with the Court and serve upon counsel for plaintiffs a copy of the proposed manual for the training of police recruits, limited to the matters expressed in the Opinion and Order of this Court dated March 14, 1973. Within fifteen (15) days thereafter plaintiffs may file with the Court and serve upon defendants their additional or alternative suggestions, if any, concerning the contents of such manual.

5. Within sixty (60) days from the date of this Order, the defendants shall file with the Court and serve upon plaintiffs a certification of compliance with the provisions of this Order.

6. The defendants shall maintain adequate statistical records, and annual summaries thereof, to provide an adequate basis for evaluation of the program for handling civilian complaints.

7. This Court reserves jurisdiction to modify this Order and the attached procedures, and to grant such further relief as may be appropriate, upon the application of any party in interest.

By The Court:

_____

J.

PHILADELPHIA POLICE DEPARTMENT DIRECTIVE 127

SUBJECT: CITIZEN'S COMPLAINT AGAINST POLICE

I. POLICY

A. All citizens complaints against police officers shall be received, investigated and disposed of in accordance with the procedures set forth herein, and complainants will be notified of the action taken by the Police Department.

B. Copies of this directive and special pre-numbered complaint forms entitled "Citizen's Complaint Report" both published in separate English and Spanish language versions shall be supplied in quantity to all Police Districts and Units and each district/unit shall be accountable for the allocated numbers issued. Additional copies of this directive and of such forms shall be supplied in quantity to the Philadelphia Commission on Human Relations and to the District Attorney's office.

C. A control log of sequential numbers shall be maintained in each Operations Room.

D. The Internal Affairs Bureau shall be the central control agency for the Police Department in all cases of citizen's complaints against police.

E. A Staff Inspector will be available to receive complaints from the nine police divisions on a 24-hour basis.

F. Either upon specific request, or in the event that a person requests general information concerning the lodging of civilian complaints against police officers, all departmental personnel shall refer such person to the nearest location where copies of the Citizen's Complaint Report may be obtained.

APPENDIX "A"

II. PROCEDURE FOR RECORDING AND PROCESSING COMPLAINTS

A. The Operations Supervisor in the district-unit receiving the complaint shall:

1. Provide to the complainant a Citizen's Complaint Report and instruct the complainant to fill in the required information on the form and sign it. In no event shall any Departmental personnel attempt to discourage or otherwise influence any person from lodging his complaint.

2. Record on the Control Log the Report Number, the D.C. Number, the complainant's name and address, the date and time of the complaint, and the name of Staff Inspector notified.

3. Prepare a 75-48, completing all block headings and Code 2703, "Complaints Against Police".

4. Notify the Staff Inspector on duty and record his name, date and time of notification on the Citizen's Complaint Report.

5. Affix signature and badge number.

6. Distribute the completed Citizen's Complaint Report as follows:

Original —Chief Inspector, Internal Affairs Bureau
1st Copy —Staff Inspector notified
2nd Copy —District/Unit Commanding Officer
3rd Copy —Complainant

7. Distribute 75-48 as follows:

White —Reports Control and Review
Yellow —District/Unit Commander
Pink —Staff Inspector notified

B. The Staff Inspector on duty shall evaluate the complaint and if possible, interview the complainant by phone. If an immediate investigation is indicated, the Staff Inspector shall confer with the pertinent Chief Inspector who will ensure that a proper investigation is initiated.

III. COMPLAINTS RECEIVED IN DISTRICT OTHER THAN THE DISTRICT/UNIT OF OCCURRENCE

A. Complaints received in a district or unit other than the district or unit of occurrence shall be processed in the following manner:

1. The Operations Supervisor in the district/unit where complaint is being reported shall:

(a) Have the complainant fill out a Citizen's Complaint Report as outlined in Section II of this directive.

(b) Obtain a D.C. number from the district of occurrence and insert on Citizen's Complaint Report and on the Control Log.

(c) Notify Staff Inspector on duty.

(d) Prepare 75-48 and distribute as follows:

Original —Reports Control and Review
Yellow —Pertinent District/Unit Commander
Pink —Staff Inspector notified

IV. INVESTIGATION OF COMPLAINTS

A. All civilian complaints concerning police misconduct which are filed within six months of the event giving rise to the complaint shall be received, investigated and disposed of in accordance with the procedures set forth herein. Complaints which are received more than

six months after the occurrence of the event giving rise to the complaint may be so investigated and disposed of in the discretion of the Chief Inspector, Internal Affairs Bureau.

B. Upon receipt of the citizen's complaint report, the Chief Inspector, Internal Affairs Bureau, shall immediately assign a member of his staff who shall have responsibility for the investigation of the alleged incident. All such investigations shall be initiated by, and insofar as practicable carried out by, the staff of the Internal Affairs Bureau. The staff of the Internal Affairs Bureau shall have direct responsibility for all investigations. No such complaint shall be referred for investigation to the commanding officer of the police officer against whom the complaint is lodged, or to any other officer of the same command.

C. The investigation by the Internal Affairs Bureau shall include, but need not be limited to, the following: interviews with the complaining witness, the alleged victim of police misconduct (if other than the complaining witness), and all other witnesses to the incident who are indicated on the complaint form; interviews with the police officer against whom the complaint is lodged and all other police officers witnessing or involved in the alleged incident; interviews with all other witnesses to the alleged incident who became known to the investigating officer as a result of his investigation; view and analysis of all physical evidence, if any, associated with the alleged incident; in the event that a criminal complaint has been lodged against any witness or participant in the event, a review and analysis of the investigation file compiled by the Police Department or the District Attorney's office in connection with such criminal complaint; such other investigative steps as may appear

appropriate in the experience of the assigned investigator.

D. The assigned investigator shall attempt to secure written statements from all participants in and witnesses to the alleged incident but, where any witness or participant is unwilling to make a signed written statement, the assigned investigator shall provide his own written summary of the oral statement, if any, provided by such participant or witness. No participant or witness shall be required or coerced into making an oral or written statement against his will. Where a written statement is given and signed by a participant or witness, the assigned investigator shall provide the person making such statement with a copy.

E. All investigations shall be completed within 45 days from the date of receipt of the complaint form by the Internal Affairs Bureau, except for extenuating circumstances stated in the file and approved by the Chief Inspector, Internal Affairs Bureau.

F. 1. When a complainant is unable to identify the police officer against whom a complaint is lodged by name or badge number, the complaint shall be forwarded to the Internal Affairs Bureau and the investigation shall commence in accordance with the procedure set forth above. In addition to the procedures set forth above, however, the assigned investigator shall make every reasonable effort to assist the complainant in making a positive identification of the police officer.

2. Where sufficient facts are adduced by a complainant (e.g. identifying number of police car, identity of other police officers in the vicinity and participating or witnessing the event, patrol sector, time and date, physical description and the like), the assigned investigator shall

provide the complainant with the opportunity to view photographs of the population of the police officers most likely to include the officer against whom the complaint is lodged or, where possible, shall provide the complainant with other opportunity to make a positive identification.

G. 1. Upon completion of his investigation, the assigned investigator will prepare an Investigation Report (75-49) and distribute as follows:

Original	—Reports Control and Review
Yellow	—Chief Inspector, Internal Affairs Bureau
Pink	—Pertinent Detective Division Commander (if investigation reveals a crime has been or may have been committed)
Goldenrod	—Staff Inspector notified
Green	—Pertinent District/Unit
Blue	—Police Department's legal advisor (hold until investigation is completed and submit with copies of all related case material.

2. Together with the yellow copy of the Investigation Report (75-49) the assigned investigator shall foward the entire investigative file (which shall include the Citizen's Complaint Report, or other report of complaint and all investigative notes and statements) to the Chief Inspector, Internal Affairs Bureau.

3. The Chief Inspector, Internal Affairs Bureau, or a Staff Inspector assigned by him, shall promptly review the entire file and shall determine the accuracy of the Investigation Report provided by the assigned investigator. Upon completion of the review (including revision and redistribution of the Investigation Report if necessary or the completion of further investigation which the Chief In-

spector may direct), the entire file shall be forwarded to the Police Commissioner together with a recommendation of the Chief Inspector, Internal Affairs Bureau, concerning the appropriate disposition of the complaint.

4. Except for extenuating circumstances stated in the file, the file and the recommendation of the Chief Inspector, Internal Affairs Bureau, shall be forwarded to the Police Commissioner within 50 days of receipt by the Internal Affairs Bureau of the Citizen's Complaint Report.

V. ANONYMOUS COMPLAINTS

A. In all instances in which an anonymous complaint is received by a member of the Police Department concerning allegations of misconduct, the individual receiving the complaint shall notify the anonymous complainant of the availability of the procedures for lodging a formal complaint.

B. Should the anonymous complainant persist in his desire to remain anonymous, the individual receiving the complaint shall elicit all facts which the complainant can provide and shall record and process the complaint in the same manner as outlined herein with the exception that the Operations Room Supervisor shall fill out the "Citizen's Complaint Form" and in space provided for complainant's signature indicate "anonymous complainant".

C. Upon receipt, the Internal Affairs Bureau shall make such investigation of the alleged incident as is possible based upon the facts presented. Where the information permits the identification of the alleged victim of police misconduct or of any witness to the alleged incident, the investigating officer shall contact the alleged victim (or shall contact such other witnesses in an attempt to determine the identity of the alleged victim) and shall inform him of the opportunity to lodge a formal complaint.

D. In the event that the alleged victim of police misconduct is identified, contacted by the investigating officer and informed of the formal complaint procedures, the failure of the alleged victim to execute a formal complaint shall be grounds for termination of the investigation. Where, however, the alleged victim cannot be identified but investigation of the facts adduced by the anonymous complainant provides supportive evidence for an act of police misconduct by an identified police officer, the investigating officer shall complete the investigation to the extent possible and shall submit his report in the manner herein provided.

VI. DISPOSITION OF FRIVOLOUS COMPLAINTS

A. Where the facts alleged in the Citizen's Complaint Report, if accepted as true in all respects and interpreted in the light most favorable to the complainant or the alleged victim of police misconduct (if other than the complainant), disclose no improper behavior on the part of the police officer against whom the complaint is lodged, the assigned investigator may refer the complaint to the Chief Inspector, Internal Affairs Bureau, with the recommendation that the investigation be terminated and the file closed. If, upon review of the investigation file, the Chief Inspector concurs in the recommendation of the assigned investigator, the Chief Inspector may terminate the investigation and so advise the Commissioner in writing, at which time the Commissioner shall cause notice to be given to the complainant and to the alleged victim of police misconduct (if other than the complainant) or his attorney or other representative designated in the Citizen's Complaint Report.

B. In all instances, the assigned investigator shall interview the complainant and the alleged victim of police misconduct (if other than the complainant) prior to forwarding a recommendation to the Chief Inspector, Internal Affairs Division, that the investigation be terminated as frivolous. In each such instance, the assigned investigator shall forward with his recommendation a copy of the Citizen's Complaint Report, the written statement(s) of the complainant and the alleged victim of police misconduct (or if no such statement was voluntarily given, the assigned investigator's summary of any oral statement(s) given) or the statement of the investigating officer that the complainant and alleged victim of police misconduct were contacted and given the opportunity to make a statement, but refused to make a statement, whether oral or written.

VII. COMPLAINTS RELATIVE TO CRIMES

A. If the complaint alleges a crime and subsequent investigation establishes the fact, the provision as outlined in Directive 79 shall be followed.

B. In the event that the complainant or the alleged victim of police misconduct (if other than the complainant) and/or the police officer(s) charged with misconduct have been arraigned on criminal charges based upon the events upon which the Citizen's Complaint Report is founded, the investigation and disposition of the complaint will proceed in conformity with the procedures set forth herein, except that the complainant or the alleged victim of police misconduct (if other than the complainant) may elect not to give a written or oral statement either to the assigned investigator or before the Police Board of Inquiry, or both, until the final disposition, including appeal, of all such criminal charges. In the event

the complainant or alleged victim makes such an election, the investigation will remain open until such criminal charges have reached final disposition, including appeal, and the opportunity given anew to the complainant or alleged victim to make such a statement. The institution of criminal charges against the complainant or the alleged victim of police misconduct (if other than the complainant) shall toll the six-month period of time in which a complaint must be lodged after the occurrence of the event giving rise to the complaint.

C. No complaint shall be refused or not investigated where the facts indicate that criminal charges based upon the event giving rise to the complaint are pending against the complainant or the alleged victim of police misconduct.

VIII. DISPOSITION OF COMPLAINTS

A. Upon receipt of the file and the recommendation of the Chief Inspector, Internal Affairs Bureau, the Commissioner of Police or a Deputy Commissioner assigned by him, shall review the entire file and determine the appropriate disposition of the complaint.

B. 1. In all cases in which the facts are not in dispute and the Commissioner determines that the accused police officer is guilty of misconduct, the Commissioner shall impose such sanctions upon the offending officer as he shall deem appropriate.

2. In all cases in which the file discloses that the facts concerning the charge are in dispute and require resolution in order to determine whether the officer is guilty of improper conduct, the Commissioner shall certify the complaint to the Police Board of Inquiry ("Board") for a hearing.

3. In all cases in which the facts are not in dispute and the Commissioner determines either that there is no probable cause to believe that the police officer committed the alleged act or that the act complained of did not constitute improper behavior, the Commissioner may certify the file closed and the investigation complete and direct that no further action be taken in regard to the complaint.

C. 1. The action of the Commissioner in disciplining the offending officer, in certifying the complaint to the Board or in terminating the investigation shall be communicated in writing, by certified mail, to the complainant and to the alleged victim of the police misconduct (if other than the complainant) or to the attorney or other representative of the alleged victim identified in the Citizen's Complaint Report. The action of the Commissioner shall also be so forwarded in writing to the officer against whom the charge was made.

2. Except for extenuating circumstances stated in the file, the determination of the Commissioner and the notice to the parties to the complaint shall be made within 60 days from the receipt of the complaint by the Internal Affairs Bureau.

3. In those instances in which the Commissioner terminates the investigation without certification to the Board for hearing, the notice to the complainant and to the alleged victim shall include a summary of the investigative findings and the reason for the Commissioner's action.

IX. HEARINGS

A. Upon certification by the Commissioner of a complaint to the Board for hearing. the Board shall schedule

a hearing to be held within 20 days from the certification of a complaint. Not less than 10 days written notice of the time and place of the hearing shall be given by certified mail to the complainant and to the alleged victim of police misconduct (if other than the complainant) or to his attorney or other representative designated in the Citizen's Complaint Report, and to the police officer charged with misconduct.

B. Continuances or other delays in the scheduled hearing date may be granted only by a member of the Board or a duly authorized administrative assistant of the Board, in writing, for cause given by the party requesting such continuance or delay. Where a continuance is granted, the hearing shall be rescheduled to be held within 10 days from the date of the first scheduled hearing, if possible, and notice shall be given to the parties by certified mail.

C. Hearings shall be informal and strict rules of evidence will not be applied. The assigned investigator and any officers against whom charges have been placed shall attend. All parties may be represented by counsel or other representative and shall have the right to present evidence and to examine and cross-examine witnesses. A stenographic record shall be kept and shall be made available, at cost, to any party to the proceedings requesting same. All hearings shall be open to the public, except that hearings may be closed by the Board where necessary to maintain order.

D. The Board, after hearing, shall make written findings of ultimate facts and based thereon shall find the police officer(s) against whom the complaint has been lodged either "guilty" or "not guilty" of misconduct. The failure of the alleged victim of police misconduct to appear and to present evidence may, in the discretion of the Board, constitute grounds for termination of the hear-

Supreme Court, U. S.
FILED
MAY 21 1975
MICHAEL RODAK, JR., CLERK

APPENDIX

in the

Supreme Court of the United States

October Term, 1974

No. 74-942

FRANK L. RIZZO, et al.,
Petitioners,
v.
GERALD G. GOODE, et al.,
Respondents,

HONORABLE JAMES H. J. TATE,
FRANK L. RIZZO, et al.,
Petitioners,
v.
COUNCIL OF ORGANIZATIONS ON PHILADELPHIA POLICE ACCOUNTABILITY AND RESPONSIBILITY, et al.,
Respondents

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petition for Certiorari filed January 30, 1975
Certiorari Granted March 31, 1975

PRESS OF ALLEN, LANE & SCOTT, INC., PHILADELPHIA

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OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, FILED NOVEMBER 1, 1974, INCORPORATED HEREIN BY REFERENCE, APPEARS IN THE PETITION FOR THE WRIT OF CERTIORARI AT PAGE 1a.

RELEVANT DOCKET ENTRIES

Goode et al. v. *Rizzo et al.*

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
Civil Action No. 70-491

February 17, 1970	Complaint filed
April 1, 1970	Defendants' Motion to Dismiss filed
April 13, 1970	Argument sur: Defendants' Motion to Dismiss
April 17, 1970	Argument sur: Defendants' Motion to Dismiss
April 17, 1970	Order denying Defendants' Motion to Dismiss filed
April 21, 1970	Plaintiffs' Motion for Determination that action may be maintained as class action filed
April 24, 1970	Answer filed
May 12, 1970	Order that this action be maintained as a class action on behalf of all residents of City of Philadelphia filed
May 13, 1970	Non-Jury Trial
May 21, 1970	Trial resumes
May 22, 1970	Trial resumes
June 18, 1970	Hearing re: Plaintiffs' Motion for Sanctions
June 18, 1970	Hearing re: Defendants' Motion for Leave to File Amended Answer
June 19, 1970	Defendants' Motion to Amend Answer filed
June 19, 1970	Order granting Defendants' Motion to Amend Answer filed

Relevant Docket Entries

July 8, 1970	Trial resumes
July 9, 1970	Defendants' Motion to Dismiss under Rule 41 (b) C.A.V.
August 17, 1970	Trial resumes
August 18, 1970	Trial resumes
September 3, 1970	Trial resumes
October 1, 1970	Plaintiffs' Proposed Findings of Fact filed
October 30, 1970	Defendants' Proposed Findings of Fact and Conclusions of Law filed
November 4, 1970	Plaintiffs' Proposed Findings of Fact and Conclusions of Law filed
March 15, 1973	Opinion and Order, Fullam, J., dated 3/14/73, plaintiffs are to make appropriate amendments to caption to reflect personnel changes, etc., defendants to submit to court within 30 days a comprehensive program for improving handling of citizen complaints alleging police misconduct, etc., copy of such proposal to be submitted to plaintiffs' counsel, plaintiffs may file counterproposals within 10 days, filed
April 12, 1973	Letter from John McNally, Esquire to Judge Fullam enclosing draft of "Directive 127" and attachments filed
April 24, 1973	Plaintiff's memorandum in response to defendants' plan for handling of citizen complaints against police, filed
September 11, 1973	Order, pursuant to Rule 25(d) amending caption to read as follows Gerald G. Goode, et al. v. Frank L. Rizzo, Mayor, et al., filed

Relevant Docket Entries

September 12, 1973	Plaintiffs' Motion for Attorneys' Fees and Costs, Notice of Motion, Affidavit in support and Memorandum in support thereof, filed
September 18, 1973	Defendants' Proposed Final Judgment filed
September 27, 1973	Letter from Judge Fullam to all counsel with enclosure filed
October 5, 1973	Memorandum and Order that defendants shall pay plaintiffs in *Goode* case (C.A. 70-491) counsel fees in the sum of $25,000 plus disbursements and costs in the sum of $4,167.58, (2) that defendants pay to the plaintiffs in the *COPPAR* case (70-2430) counsel fees in the sum of $10,000 plus disbursements and costs in the sum of $250, (3) that the memorandum and order be filed of record in both cases, filed
October 5, 1973	Final Judgment that defendant, Joseph F. O'Neill shall forthwith promulgate as an intra-departmental directive procedures for the receipt, investigation and deposition of certain complaints of police misconduct, etc., filed
October 24, 1973	Defendants' Notice of Appeal, filed
October 24, 1973	Defendants' Notice of Appeal, filed
November 5, 1973	Plaintiffs' Notice of Cross-Appeal, filed
November 27, 1973	Plaintiffs' Motion to Enforce Final Judgment, Notice of Motion, Affidavit in support and Memorandum in support, filed

November 27, 1973	Defendants' Motion for Stay, Notice of Motion, Memorandum in support, filed
December 19, 1973	Memorandum and Order, Fullam, J., dated 12/18/73 that the Defendants' Motion for Stay of the Final Judgment entered on October 5, 1973 is DENIED. Plaintiffs' Motion for Enforcement of the Final Judgment in these cases is Granted, effective 5 days from and after the date of this order, filed
May 8, 1975	Order, Fullam, J., dated 5/7/75 that Letters and enclosures shall be Docketed nunc pro tunc as of their respective dates, filed

COPPAR et al. v. *Rizzo et al.*

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
Civil Action No. 70-2430

September 3, 1970	Complaint, filed
Eo. Die.	Motion for Preliminary injunction, filed
Eo. Die.	Motion for temporary restraining order, filed
September 4, 1970	Hearing sur motion for temporary restraining order—Witnesses sworn, JF. Caption amended by substituting "Coalition" for "Council"
Eo. Die.	Temporary Restraining Order enjoining police from violating rights

	of plaintiffs guaranteed to them under the Constitution of the U.S., etc. until further hearing, fixed for 9/11/70 at 10 a.m., and denying without prejudice plaintiffs motion for temporary restraining order as to defendants Tate, Corleto and Specter, securities to be entered by plaintiffs in the sum of $1.00, filed (9/8/70 entered and copies mailed)
September 11, 1970	Order continuing hearing to 9/21/70 at 10:00 a.m.; temporary restraining order shall remain in effect, etc., filed. 9/12/70 entered and copies mailed.
September 21, 1970	Defendants' motion to dismiss plaintiffs' complaint and notice, filed
September 28, 1970	Motion of A. Specter to dismiss plaintiffs complaint, filed
Eo. Die.	Argued sur defendants motion to dismiss—Hearing re: Temporary Restraining Order witnesses sworn—continued to November 2, 1970 at 10:00 a.m.
October 8, 1970	Plaintiffs memorandum of witnesses/incidents, filed
November 2, 1970	Hearing re: plaintiffs' motion for issuance of Order to Show Cause and For Contempt Judgment—witnesses sworn
November 4, 1970	Hearing re: motion for judgment of contempt—witnesses sworn C.A.V. Hearing re: preliminary and permanent injunction—witnesses sworn

November 5, 1970	Hearing re: preliminary and permanent injunction—witnesses sworn Hearing continued
November 13, 1970	Answer of Tate, et al., filed
December 1, 1970	Further hearing Re: Preliminary and Permanent Injunction—witnesses sworn
December 2, 1970	Further hearing Re: Preliminary and Permanent Injunction—witnesses sworn
December 3, 1970	Further Hearing Re: Preliminary and Permanent Injunction. Defendants' oral motion to dismiss is denied by the Court.
December 4, 1970	Further Hearing Re: Preliminary and Permanent Injunction
January 4, 1971	Defendants' motion to dismiss action of plaintiffs Black Panther Party and Young Lords Party and Notice, filed
Eo. Die.	Defendants' motion to dismiss action of plaintiff Council of Organizations on Phila. Police Accountability and Responsibility and notice, filed
Eo. Die.	Memorandum of law in support of defendants motion to apply the sanction of dismissal, filed
January 5, 1971	Further hearing Re: motion for preliminary injunction—witnesses sworn. Defendant's motion to dismiss action of plaintiff Council of Organizations on Phila. Police Accountability and Responsibility—Denied. Defendant's motion to dismiss action of plaintiffs,

	Black Panther Party and Young Lords Party—C.A.V.
January 6, 1971	Further hearing re: motion for preliminary injunction—witnesses sworn
January 7, 1971	Further hearing re: motion for preliminary injunction—witnesses sworn
January 19, 1971	Further hearing: Motion for Prelinary Injunction. Oral motion of Mr. Akers for a preliminary injunction—Denied. Findings of Fact within 15 days after final notes of testimony are transcribed
March 8, 1971	Plaintiff's proposed Findings of Facts and Conclusions of Law, filed
Eo. Die.	Plaintiff's proposed Conclusions of Law, filed
Eo. Die.	Plaintiff's motion for reference to a special master, filed
Eo. Die.	Plaintiff's motion to re-open record and affidavit of E.D. Wolf, filed
March 9, 1971	Defendant's proposed Findings of Facts and Conclusions of Law, filed
March 15, 1973	Memorandum FULLAM, J., and Order that the Black Panther Party and Young Lords are stricken from the caption of the case as plaintiffs, and as to those plaintiffs the complaint is Dismissed; the remaining plaintiffs are directed to make appropriate amendments to the caption of the case to reflect changes in personnel; and the defendants are di-

	rected, within 30 days to submit a comprehensive program for improving handling of citizen complaints alleging police misconduct, etc., filed (3/15/73 entered and notice mailed)
March 20, 1973	Plaintiff's (Council of Organizations on Police Accountability, etc.) petition for the allowance of counsel fees and expenses, filed
September 19, 1973	Plaintiff's amended bill of costs, filed
September 24, 1973	Plaintiff's supplement to motion for restitution, filed
October 5, 1973	Memorandum, FULLAM, J., and Order that defendants shall pay plaintiffs in *GOODE* case (C.A. 70-491) counsel fees in the sum of $25,000.00 plus disbursements and costs in the sum of $4,167.58; that defendants shall pay to plaintiffs in the *COPPAR* case (C.A. 70-2430) counsel fees in the sum of $10,000.00, plus disbursements and costs in the sum of $250.00; and that the foregoing Memorandum and this Order shall be filed of record in both cases, filed (10/5/73 entered and notice mailed)
Eo. Die.	Final Judgment setting procedures and directing promulgation of procedures, forms, etc., re investigation of civilian complaints, and setting times for compliance with Judgment, etc., filed (10/9/73 entered and copies mailed)

May 8, 1975	Order, Fullam, J., dated 5/7/75 that letters and enclosures shall be docketed nunc pro tunc as of their respective dates, filed

Goode et al. v. *Rizzo et al.*
COPPAR et al. v. *Tate et al.*

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 72-2023/24/25
Nos. 73-2077/78/79

December 27, 1973	Motion by Appellants for stay of the October 5, 1973 Judgment of the U.S. District Court for the Eastern District of Pennsylvania, pending appeal, filed. (4 cc.). Certificate of Service Attached.
January 11, 1974	Order (*Adams,* Hunter and Weiss) granting appellants' motion for stay of the October 5, 1973 Judgment of the U.S. District Court for the Eastern District of Pennsylvania pending appeal, filed.
January 18, 1974	Order (Clerk) granting motion by Goode, et al., to consolidate appeals in Nos. 73-2023-5 with appeals Nos. 73-2077-9 and motion by cross-appellants to consolidate appeals Nos. 73-2077-9 with appeals in Nos. 73-2023-5
June 10, 1974	Argued. Curam: Staley, Gibbons and Weis, Circuit Judges (Covers 73-2023/5 and 73-2077/9)

Relevant Docket Entries

November 1, 1974	Opinion of the Court (Staley, Gibbons and *Weis*, C.J.), filed. (Covers 73-2023/5 and 73-2077/9)
November 1, 1974	Judgment affirming the judgment of the District Court entered October 5, 1973 as to the injunctive relief; vacating and remanding the award of counsel fees for further proceedings not inconsistent with the opinion of this Court, filed
November 15, 1974	Petition for rehearing by appellants, Frank L. Rizzo, et al., and Honorable James H. J. Tate, et al., filed. (Covers 73-2024/5 and 73-2077/8)
December 6, 1974	Order (Seitz, CH.J., Staley, Van Dusen, Aldisert, Gibbons, Rosenn, Hunter, *Weis* and Garth, C.J.) denying petition for rehearing by appellants, filed. (Judge Adams took no part in the consideration or decision of this petition). (Covers 73-2024/5 and 73-2077/8)
November 25, 1974	Certified judgment in lieu of formal mandate issued (Covers 73-2023 and 73-2079)
December 16, 1974	Certified judgment in lieu of formal mandate issued (Covers 73-2024 and 73-2077)
January 6, 1974	Certified judgment in lieu of formal mandate issued (Covers 73-2025 and 73-2078)

Complaint

COMPLAINT

I. Jurisdiction

1. This is an action arising under 42 U.S.C. § 1983 and 1988 for declaratory, injunctive and other relief to redress the deprivation by defendants, their agents, employees and other acting in concert with them, purportedly acting under State law, statute, ordinance, regulation, custom or usage of plaintiffs' rights, privileges and immunities secured by the Constitution of the United States. Jurisdiction is based upon 28 U.S.C. § 1343. Declaratory and further relief is sought pursuant to 28 U.S.C. § 2201 and 2202. The following rights secured to plaintiffs and the members of the class and the included class they represent by the Constitution of the United States have been and, unless otherwise enjoined, will continue to be violated by the activities of defendants, their agents and employees:

(a) The rights secured by the Due Process Clause of the Fourteenth Amendment to be free from illegal and abusive police practices including the use of excessive force and the imposition by police of summary punishment; and

(b) The rights of the black residents of the City of Philadelphia to Equal Protection of the Laws secured by the Fourteenth Amendment.

II. Plaintiffs and Plantiffs' Classes

2. Plaintiff Gerald G. Goode, a black man and a graduate student at the University of Pennsylvania, resides at 1856 East Tulpehocken Street, Philadelphia, Pennsylvania.

3. Plaintiff Louis J. Reed, a black woman and a teacher at the Carver Elementary School, resides at 1900 John F. Kennedy Boulevard, Philadelphia, Pennsylvania.

4. Plaintiff Herbert Brown, a black man and an employee at Fryes Family Market, resides at 1415 Vodges Street, Philadelphia, Pennsylvania.

5. Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated, pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure. The members of the class represented by plaintiffs are the residents of the City of Philadelphia. By virtue of the defendants' practice of authorizing or allowing their agents or employees to employ illegal police practices, including the use of excessive force and the imposition of summary punishment, every member of this class has been and continues to be threatened with imminent deprivation of rights secured by the Fourteenth Amendment to the United States Constitution.

The members of the included class represented by plaintiffs are the black residents of Philadelphia. On information and belief, defendants have authorized or allowed the above illegal practices primarily in the black residential areas of Philadelphia. This deliberate practice violates the rights of the black residents of Philadelphia to the Equal Protection of the Laws, secured by the Fourteenth Amendment to the Constitution of the United States. A large proportion of the included class on behalf of which plaintiffs sue is indigent, unable other than through means of this action to both vindicate and ensure the federally protected rights which plaintiffs assert.

6. The members of the class and the included class on behalf of which plaintiffs sue are so numerous that joinder of all members is impracticable. There are questions of law and fact common to the class and the included class, and the named plaintiffs have a claim typical of the claims of the class and the included class. The named plaintiffs will fairly and adequately protect the interests of the class and the included class.

III. Defendants

7. Defendant James H. J. Tate is Mayor of the City of Philadelphia and is responsible for the conduct of the executive and administrative work of the City and for law enforcement within its boundaries.

8. Defendant Fred T. Corleto is Managing Director of the City of Philadelphia and is charged under Section 5-100 of the Philadelphia Home Rule Charter (hereinafter "Charter") with the exercising of supervision over all activities of those departments whose heads he appoints. Pursuant to Charter Section 3-206, the Managing Director with the approval of the Mayor, appoints the Police Commissioner of the City of Philadelphia.

9. Defendant Frank L. Rizzo is Police Commissioner of the City of Philadelphia and, pursuant to Charter Section 3-404, serves at the pleasure of the Managing Director. He also has duties of supervision and control over activities of the Police Department. Pursuant to Charter Section 5-200(b), the Police Department "shall . . . discipline the Philadelphia Police."

10. Defendant Robert G. Selfridge is Deputy Police Commissioner in charge of the activities of uniformed police and exercises powers of supervision and control over uniformed police officers in the City of Philadelphia.

11. Defendant William Murphy is the Chief of the Highway Patrol and exercises powers of supervision and control over its members.

12. John D'Amico is a police officer who is an agent of and is employed by the City of Philadelphia. He is a member of the Highway Patrol.

13. Anthony DeFazio is a police officer who is an agent of and is employed by the City of Philadelphia. He is a member of the Highway Patrol.

14. At all relevant times, defendants have acted toward plaintiffs and the class and the included class they represent through their agents, officers of the Police Department of the City of Philadelphia, Pennsylvania.

15. At all relevant times, the defendants and their agents and employees were acting under color of the statutes, ordinances, regulations, customs and usages of the Commonwealth of Pennsylvania and of the City of Philadelphia.

IV. The Offenses

16. Defendants have encouraged and permitted Officers D'Amico and DeFazio to use excessive force, to administer summary punishment and to act in a discriminatory fashion to members of the included class.

17. Defendants failed to take adequate disciplinary steps, including dismissal, against Officers D'Amico and DeFazio when their illegal and unconstitutional activities either actually came to their attention or should have come to their attention.

18. Defendants have failed to provide an adequate system of internal police review of incidents between police and members of the class and the included class in which it is alleged that police officers have used excessive force, administered summary punishment or acted in a discriminatory fashion. Without such a system, defendants have been unable to exercise sufficient control over Officers D'Amico and DeFazio, thus enabling them to deprive members of the class and the included class of their constitutional rights.

19. As a result of the foregoing, at least the following illegal and unconstitutional acts by Officers D'Amico and DeFazio have taken place.

The Gerald G. Goode Incident

20. On or about December 1, 1969, in the late evening, Officers D'Amico and DeFazio were assigned to duties as police officers on behalf of the City of Philadelphia within the vicinity of Broad Street and Erie Avenue, Philadelphia, Pennsylvania.

21. On the aforesaid date, plaintiff was a passenger in an automobile driven by Mrs. Michael J. Rotko proceeding north on Broad Street. He was behaving in a lawful and peaceful fashion.

22. On the aforesaid date and at or near said intersection, while stopped at a traffic light, plaintiff Goode remarked to Mrs. Rotko in a voice loud enough to be heard by Officers D'Amico and DeFazio that he believed the officers had no right to "frisk" a black man in the fashion he observed. Plaintiff Goode used no profanity or obscenity in his remark to Mrs. Rotko.

23. In response to this remark and in the absence of any criminal activity whatsoever by plaintiff Goode, Officers D'Amico and DeFazio stopped Mrs. Rotko's automobile, terrifying her, and dragged plaintiff from it, striking him about the face, head, body and limbs using hands, fists, and a blackjack. Then they threatened Mrs. Rotko with arrest and searched her car.

24. As a direct result of this attack, plaintiff Goode suffered multiple injuries to his body including, a lacerated lip, severe contusions and abrasions of his head, face, body and limbs, injury to his teeth and severe shock to his body and nervous system, all of which caused him great pain, suffering and humiliation.

25. Immediately following this incident, plaintiff Goode was arrested and charged with two counts of assault and battery on a police officer and one count each of disorderly conduct and resisting arrest.

26. Immediately thereafter, plaintiff Goode was falsely detained in jail until the next day, December 2, 1969 at approximately 8:00 a.m.

27. Subsequently, the Commonwealth of Pennsylvania moved to dismiss all criminal charges against plaintiff Goode. The motion was granted by the Municipal Court on February 11, 1970.

The Louise J. Reed Incident

28. In October or November of 1967, plaintiff Reed, a black woman, was a teacher at the Carver Elementary School, near 17th and Norris Streets, Philadelphia, Pennsylvania. As she left the school, a fellow teacher, Coleman Clarke, a white man, was stopped by Officer DeFazio in connection with an alleged traffic violation.

29. Plaintiff Reed was accompanied by other black teachers at Carver Elementary School, one of whom was Juanita Crosby.

30. Following the issuance of a traffic summons, Officer DeFazio remarked to Mr. Clarke "You don't have to act like the black pigs who live around here." While in Officer DeFazio's presence, Mr. Clarke related this statement to Miss Crosby and plaintiff Reed. At that time, plaintiff Reed lived in the neighborhood.

31. Plaintiff Reed challenged Officer DeFazio about the remark. He did not deny it; nor did he retract or apologize. Subsequently, she complained to the Police Department about Officer DeFazio's conduct and, as a result, he was suspended for ten days.

32. As a result of the foregoing incident, Officer DeFazio's active racial bias came to the attention of his superiors.

The Clarence Anthony Incident

33. On or about December 7, 1969 (one week after the Gerald Goode incident), Clarence Anthony, then a resident of 624 West Montgomery Avenue, Philadelphia, Pennsylvania, was accused of the rape of a ten year old girl.

34. On information and belief, Officer D'Amico and DeFazio were two of three officers sent to apprehend him. The third officer was black and travelled to the scene separately.

35. Upon arriving at the residence of Mr. Anthony, Officers D'Amico and DeFazio found him already in the custody of the third officer.

36. Officers D'Amico and DeFazio took Mr. Anthony out of the door and onto the street, holding and pushing him in such a way as to provoke resistance on his part. Upon information and belief, Mr. Anthony resisted their efforts and Officers D'Amico and DeFazio used force to subdue him. Once this was achieved, however, and after he was subdued, they beat Mr. Anthony unconscious.

37. Mr. Anthony was taken to a hospital and received medical treatment.

38. Thereafter, he was returned to the Police District at East Girard and Montgomery Streets whereupon he was taken out of the sight of his family into a cell and beaten. From the cell he cried out to members of his family.

39. Later that evening, Mr. Anthony was transported to the East Detective Division, Front and Westmoreland Streets.

The Herbert Brown Incident

40. Later that evening, Mr. Anthony was found hanging in his cell, dead.

41. On or about the early morning of December 2, 1969, shortly after the Gerald Goode incident, plaintiff Herbert Brown, a black man, was attempting to revive a dead battery in his automobile.

42. On or about said date, Officers D'Amico and DeFazio arrested plaintiff Brown on a charge of larceny of an automobile battery.

43. They took him into their possession and although he was not resisting arrest or custody in any manner, beat him with hands and fists about the head and body.

44. All criminal charges against plaintiff Brown were subsequently dismissed.

The Bernard Sisco Incident

45. Bernard Sisco, a black man, residing at 3620 Wallace Street, Philadelphia, Pennsylvania, is totally blind.

46. On or about October 31, 1969 he was arrested and charged with rape and other related offenses.

47. While in custody and without necessity, he was severely beaten by several police officers, one of whom was Officer DeFazio. Mr. Sisco was then charged with several offenses related to an alleged attack by him on the officers.

48. Subsequently, all criminal charges related to the alleged rape were dismissed when the victim testified that she never identified Mr. Sisco as an attacker. The charges related to the alleged attack of the officers were held for action by the Grand Jury.

V. Need for Mandatory Injunction

49. Plaintiffs seek a mandatory injunction from this Court because they cannot obtain adequate redress and protection of rights of the class and the included class by other means.

50. The state procedures do not provide adequate avenues for challenging the kind of police actions complained of herein.

51. Plaintiffs believe that during the last 12 years there have been only a small number of criminal prosecutions against police officers in the City of Philadelphia for the use of excessive force upon a member of the public. No criminal indictment has been obtained against either Officer DeFazio or D'Amico as a result of any of the foregoing incidents.

52. Actions for damages in either a state or federal court usually require more than three years to come to trial and do not comprise an effective restraint upon illegal and unconstitutional police practices.

53. The administrative processes of the City of Philadelphia do not afford relief in such situations.

(a) The Police Advisory Board, which once handled complaints against police, has been disbanded.

(b) No other civilian administrative agency provides effective redress. The Community Relations Division of the Philadelphia Commission on Human Relations, one of the City agencies for processing citizen complaints of police misconduct, ceased to investigate such complaints in February 1969, citing noncooperation and inadequate investigation on the part of the Philadelphia Police Department as major reasons for its withdrawal.

(c) The procedures internal to the Police Department for receiving and handling complaints are not adequate; if complaints are investigated, effective redress for the complaint does not result.

54. Officer DeFazio was suspended in September 1967 for three days upon the complaint of another policeman for characterizing a member of the public as a "Jew bastard." Despite this incident of anti-Semitism and despite the racial incident involving plaintiff Reed, both of which came to the attention of Officer DeFazio's superiors, no effective restraints were placed upon him and he was permitted to remain on active duty in racially sensitive areas, thus permitting the incidents complained of herein.

VI. Relief Requested

Plaintiffs and the members of the class and the included class they represent have suffered, are now suffering and will continue to suffer irreparable injury by virtue of the defendants' acts and practices as set forth above. They have no adequate remedy at law to redress these violations of their constitutional rights other than this suit for declaratory and injunctive relief. No other remedy would offer plaintiffs and the members of the class and the included class they represent substantial and complete protection from a continuation of defendants' policies and practices.

WHEREFORE, plaintiffs pray that this Court:

1. Grant a speedy hearing and prompt disposition of this action according to law.

2. After a prompt hearing of this action according to the law, issue an order declaring that:

(a) The acts complained of herein of defendants, their agents, employees and all those acting in concert with them or at their direction violate the rights of the plaintiffs and the class they represent to be free from summary punishment and from the use of excessive forces;

(b) The acts complained of herein of defendants, their agents, employees and all those acting in concert with them or at their direction violate the rights of the plaintiffs and of the included class they represent to Equal Protection of the Laws secured by the Fourteenth Amendment.

3. After a prompt hearing of this action according to law, issue an order enjoining defendents, their agents, employees and those acting in concert with them, both preliminarily and permanently, from permitting Officers D'Amico and DeFazio to continue as police officers in the City of Philadelphia.

4. After a prompt hearing of this action according to law, issue an order requiring defendants to initiate adequate procedures to assure the following minimum standards:

(a) To receive and maintain at a central location public records of all charges of illegal police activity lodged by private citizens against police officers;

(b) To hold public hearings before the Police Board of Inquiry or similar such body at which time the complainant, and any witnesses he may have, may testify and be represented and at which time he may cross-examine the officers involved and any witnesses called by them; and

(c) To make public the disposition of each case plus a detailed statement of the reasons for that disposition.

5. After a prompt hearing of this action according to law, issue an order in any or all of the forms proposed by counsel for plaintiffs requiring defendants to take measures necessary to ensure that no future illegal activities violative of constitutional rights occur.

6. After a prompt hearing of this action according to law, issue an order retaining jurisdiction of this claim until such time as this Court is assured from the activities of the defendants and their agents that no further interference with the constitutional rights of plaintiffs and the members of the class and included class they represent is threatened.

7. Accord all such other, further or additional relief as may appear to the Court to be equitable and just.

8. Allow the named plaintiffs herein, their costs and reasonable attorney's fees.

PETER HEARN
JACK LEVINE
WILLIAM M. EICHBAUM
F. JOHN HAGELE, III
BARBARA W. MATHER
Attorneys for Plaintiffs

Of Counsel:

PEPPER, HAMILTON & SCHEETZ

Kindly address all notices:

2001 The Fidelity Building
123 South Broad Street
Philadelphia, Pennsylvania 19109

February 17, 1970

DEFENDANTS' MOTION TO DISMISS UNDER RULE 12(b)

The defendants move the Court as follows:

1. To dismiss the action because the Complaint fails to state a claim against defendants upon which relief can be granted in that:

(a) As a matter of law, plaintiffs have no cause of action against any of the defendants for alleged violations of plaintiffs' civil rights;

(b) The doctrine of "respondent superior" has no place under civil rights statutes since only personal involvement is contemplated and, absent such an averment, as in this matter, officials of the City of Philadelphia have no responsibility;

(c) General allegations that alleged offending policemen were under the control and supervision of City officials is not sufficient to bring them under the Civil Rights Statutes;

(d) The named City of Philadelphia officials are not responsible unless they were present or personally directed the alleged acts or cooperated in them;

(e) The defendants are immune from any liability in the exercise of their governmental duties absent a personal involvement.

(f) Non-action by defendants, absent a personal involvement, does not deprive plaintiffs of any rights, privileges or immunities granted by the Constitution of the United States.

(g) The exercise of discretion by local authorities with respect to police recruitment, screening of applicants, training and discipline as well as the method of

police investigation is not a matter for review by the Federal Courts.

WHEREFORE, defendants request Your Honorable Court to dismiss plaintiffs' Complaint.

GEORGE J. IVINS
Deputy City Solicitor

LEVY ANDERSON
First Deputy City Solicitor

EDWARD G. BAUER, JR.
City Solicitor

Attorneys for Defendants

ORDER ALLOWING MAINTENANCE OF CLASS ACTION DATED MAY 12, 1970

AND Now, this 12th day of May, 1970, it is hereby ordered that this action may be maintained as a class action under Rule 23(b)(2) of the Federal Rules of Civil Procedure on behalf of all residents of the City of Philadelphia and on behalf of an included class of all black residents of Philadelphia.

JOHN P. FULLAM

J.

CA 70-491

ANSWER OF DEFENDANTS

1. Jurisdiction admitted but it is denied that the defendants have violated any constitutional rights of the plaintiffs nor the class alleged to be represented.

2. Admitted.

3. Admitted.

4. Admitted.

5. Denied in part and admitted in part. It is admitted that plaintiffs bring this action on their own behalf and as members of a class. The remaining averments of paragraph 5 are denied generally. Specifically, it is denied that the defendants have authorized or allowed any illegal practices in any areas of the City of Philadelphia including the black residential areas of said City.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. Denied in part and admitted in part. It is admitted that the named defendants act through officers of the Police Department of the City of Philadelphia but it is denied that defendants have acted "toward plaintiffs and the included class they represent (alleged)" in any way other than in accordance with their duties and obligations as duly elected and appointed officials of the City of Philadelphia.

15. Denied in part and admitted in part. On the contrary, it is averred that the named defendants acted as

required by the Philadelphia Home Rule Charter and applicable Statutes of the Commonwealth of Pennsylvania.

16. Denied. It is denied that the defendants have encouraged and permitted Officers D'Amico and DeFazio to use excessive force to administer summary punishment and to act in a discriminatory fashion against either the plaintiffs or members of the alleged included class. On the contrary, it is averred that defendants have by official order directed that there shall not be used any excessive force, nor shall any officers administer summary punishment nor shall any officers act in a discriminatory fashion to members of the alleged included class or the plaintiffs themselves, and these directions and orders apply to Officers D'Amico and DeFazio as members of the Philadelphia Police Department.

17. Denied in part and admitted in part. It is admitted that Officers D'Amico and DeFazio have not been dismissed but all other averments of said paragraph are denied. On the contrary, it is averred that the defendants have taken adequate disciplinary steps, where required, against such Officers and it is further denied that such Officers committed any unconstitutional activities in the course of their duties as members of the Philadelphia Police Department.

18. Denied. It is specifically denied that the defendants have failed to provide an adequate system of internal police review of incidents between police and members of the alleged included class. On the contrary, it is averred that a Board known as the Police Board of Inquiry exists for the express purpose of advising the Police Commissioner with respect to violations of any departmental orders which include the deprivation of any citizen's constitutional rights.

19. Denied. It is denied that any actions by Officers D'Amico and DeFazio are illegal and unconstitutional. On

the contrary, it is specifically averred that all acts of aforesaid Officers were in the ordinary and normal course of their duties and that in such instances, where said Officers have been involved in violations of Departmental orders and directives, proper disciplinary action has been taken.

20. Admitted.

21. Admitted.

22. Denied in part and admitted in part. On the contrary, it is specifically averred that plaintiff Goode, at the time and place alleged, took it upon himself to cast aspersions upon said Officers D'Amico and DeFazio who were then and there in the exercise of their proper duties as Officers of the Philadelphia Police Department. It is further averred that said plaintiff Goode shouted at said Officers D'Amico and DeFazio in such manner as to debase their activities and using violently profane language toward them.

23. Denied in part and admitted in part. It is admitted that said Officers stopped Mrs. Rotko's automobile but the remainder of the averments in paragraph 23 are denied. On the contrary, it is specifically averred that plaintiff Goode continued to abuse said Officers verbally and, although informed that he was under arrest, he resisted his removal from the automobile in which he was riding. During his resistance, plaintiff Goode struck Officer DeFazio in the face with his forearm and Officer DeFazio struck Goode once with his blackjack to subdue said Goode and place him under physical arrest. It is further averred that all other physical problems connected with this matter consisted of the pushing, pulling and wrestling with Mr. Goode until he was removed from the vehicle and handcuffs were placed on him. It is denied that Mrs. Rotko was threatened with arrest nor was her automobile

searched as alleged. On the contrary, it is averred that only that part of the automobile in which Goode was seated was searched.

24. Denied in part and admitted in part. It is denied that plaintiff Goode was the subject of any attack and on the contrary, it is averred that whatever resulted from the difficulty was caused by Goode's violent resistance to arrest by said Officers. It is specifically denied that plaintiff Goode suffered the injuries alleged in his Complaint and on the contrary, it is averred that Goode suffered only a small laceration of the upper lip requiring four (4) sutures to close and bruises on the left cheek.

25. Admitted.

26. Denied. It is denied that plaintiff Goode was falsely detained in jail until the next day. On the contrary, it is averred that Goode was detained as a result of a legal arrest and was duly arraigned before a Judge of the Municipal Court of Philadelphia and released on nominal bail pending a hearing.

27. Admitted.

28. Admitted.

29. Denied. Defendants are without information or knowledge as to who accompanied plaintiff Reed nor do they have any information or knowledge as to whether one of such persons was Juanita Crosby. Accordingly, the averments are denied.

30. Admitted.

31. Denied in part and admitted in part. Defendants have no information or knowledge as to the individual actions of plaintiff Reed and accordingly, this averment is denied. Defendants admit that a Complaint was filed with the Police Department about Officer DeFazio's conduct, one of the complaining parties being plaintiff Reed,

but deny that Officer DeFazio was suspended for ten (10) days. On the contrary, it is averred that after a full hearing before the Police Board of Inquiry, at which time Officer DeFazio denied making the statement alleged, he was suspended for two (2) days.

32. Denied. Defendants have been informed, believe and therefore aver that the allegation in paragraph 32 is a conclusion and not an averment of fact and as such a responsive answer is not required.

33. Admitted.

34. Admitted.

35. Denied. It is denied that upon the arrival at the residence of Anthony Officers D'Amico and DeFazio found said Anthony already in the custody of the third officer. On the contrary, it is specifically averred that the third officer had not yet taken Anthony into custody although said Anthony had been identified to the third officer as the alleged rapist.

36. Denied in part and admitted in part. It is admitted that Officers D'Amico and DeFazio took Anthony into custody but the remaining averments of paragraph 36 are denied. On the contrary, it is averred that Officers D'Amico and DeFazio took custody of Anthony at the request for assistance by the third officer (Policeman Conway) but they did not push or provoke resistance on the part of said Anthony. By way of further answer, it is averred that Anthony resisted the efforts of Officers D'Amico and DeFazio to arrest him and he broke free from the Officers and began to run away. At this time Officers D'Amico and DeFazio again apprehended Anthony and they struggled across the street where Anthony punched at the Officers and struck them with an antenna which he broke from the Officers' police car. The Officers then struck Anthony with their blackjacks to stop his

attack upon them. Defendants have been informed, believe and therefore aver that after Anthony was subdued the Officers did not strike Anthony again nor was he unconscious but was able to get into the police wagon with the assistance of the police after being handcuffed.

37. Admitted. By way of further answer, it is averred that Anthony was treated at Saint Luke's Hospital for a laceration of the scalp and was then released by the Hospital into police custody.

38. Denied in part and admitted in part. It is admitted that after treatment at the Hospital, Anthony was returned to the 26th Police District and put in a cell. It is specifically denied that he was beaten in the cell or that he cried out to his family. On the contrary, it is averred that said Anthony was merely kept in custody awaiting further police action by way of being officially charged with the alleged rape.

39. Admitted. By way of further answer, it is averred that Anthony was subsequently transferred to the East Detective Division, Front and Westmoreland Streets, Philadelphia, at about 6:30 P.M. arriving there at 6:50 P.M. for the specific purpose of attempting to interrogate him relative to the alleged rape and to prepare the necessary paper work to send said Anthony to the Police Administration Building for processing of the Complaint.

40. Admitted. By way of further answer, it is averred that Anthony was found dead in his cell a victim of hanging at or about 10:15 P.M. on the day aforesaid. It is averred that Anthony was immediately cut down and transported to a hospital where he was pronounced dead on arrival at 10:45 P.M. An examination of Anthony's body by the Medical Examiners Office was made and it was determined that Anthony's death was caused by suicide by hanging.

41. Denied. It is specifically denied that plaintiff Herbert Brown was attempting to revive a dead battery in his automobile on the early morning of December 2, 1969. On the contrary, it is specifically averred that the said Brown accompanied by a friend of his, one, Herbert Joyner, were underneath the hood of a car which belonged to one Clive Whitcombe, and that said Whitcombe gave no one permission to touch his automobile.

42. Admitted, with the provision that the charge was attempted larceny.

43. Denied in part and admitted in part. It is admitted that Brown was taken into custody but it is specifically denied that the arresting officers beat said Brown in any manner whatsoever.

44. Admitted. By way of further answer, it is averred that the criminal charges were dropped because of lack of prosecution by Whitcombe but defendants have been informed, believe and therefore aver that he did not wish to carry the case any further since he did not lose anything and did not wish to attend the hearing.

45. Admitted.

46. Admitted.

47. Denied. Defendants have been informed, believe and therefore aver that Sisco was not beaten by any police officer while in custody.

48. Denied in part and admitted in part. It is admitted that criminal charges relating to the alleged rape were dismissed but it is denied that the alleged victim never identified Sisco as the attacker. On the contrary, it is specifically averred that the alleged victim admitted that initially she had identified Sisco as one of her attackers but thereafter indicated that she was not sure of the identification. Said change in identification information taking place on November 1, 1969 approximately one (1)

day after the alleged attack. By way of further answer, it is averred that the Complaint which reads "the charges related to the alleged attack of the officers were held for action by the Grand Jury" is incorrect since Sisco was held in nominal bail for the Grand Jury on the charges relating to his assault on the police officer.

49. Denied. Defendants have been informed, believe and therefore aver that paragraph 49 of the Complaint contains mere conclusions and not averments of fact and no further answer is required.

50. Denied. Defendants have been informed, believe and therefore aver that paragraph 50 of the Complaint contains mere conclusions and not averments of fact and no further answer is required.

51. Denied in part and admitted in part. It is admitted that no criminal indictments have been obtained against either Officer D'Amico or Officer DeFazio but the remaining averments of the said paragraph are denied as mere conclusions and defendants have been informed, believe and therefore aver that no further answer is required.

52. Denied. Defendants have been informed, believe and therefore aver that paragraph 52 of the Complaint contains mere conclusions and not averments of fact and no further answer is required.

53. Denied. Defendants have been informed, believe and therefore aver that paragraph 53 of the Complaint contains mere conclusions and not averments of fact and no further answer is required.

53a. Admitted.

53b. Denied. Defendants have been informed, believe and therefore aver that paragraph 53b of the Complaint contains mere conclusions and not averments of fact and no further answer is required.

53c. Denied. Defendants have been informed, believe and therefore aver that paragraph 53c of the Complaint contains mere conclusions and not averments of fact and no further answer is required.

54. Denied in part and admitted in part. It is admitted that Officer DeFazio was suspended in 1967 for three (3) days for characterizing a member of the public as a "Jew bastard". It is specifically denied that the defendants permitted any of incidents complained of to occur and it is averred that the remaining statements of said paragraph are mere conclusions and as such, defendants have been informed, believe and therefore aver no further answer is required.

WHEREFORE, defendants pray Your Honorable Court to dismiss the Complaint on the ground that said Complaint does not state a cause of action against them individually or collectively.

LEVY ANDERSON
City Solicitor

GEORGE J. IVINS
Deputy City Solicitor

AMENDMENT TO ANSWER

SECOND DEFENSE

The Complaint fails to state a claim for relief.

THIRD DEFENSE

The Complaint fails to state a claim for equitable or declaratory relief.

FOURTH DEFENSE

The Court lacks jurisdiction over the claim.

FIFTH DEFENSE

The Court should abstain from interfering with a purely discretionary function or matter of the local executive department.

SIXTH DEFENSE

The disciplining of police officers is a matter of local and state law only and is not a matter properly for this court.

SEVENTH DEFENSE

Plaintiffs have failed to exhaust their administrative, state and other federal court remedies.

EIGHTH DEFENSE

Plaintiffs have failed to join indispensable parties, namely Officers D'Amico and DeFazio, against whom this suit and the prayer for relief is directed.

WHEREFORE, Defendants pray that the Complaint be dismissed with costs to defendants.

GEORGE J. IVINS
Deputy City Solicitor
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City Solicitor
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COMPLAINT

(Action for Declaratory and Injuctive
Relief Restraining Enforcement
of Illegal State Acts)

JURISDICTION

1. Plaintiffs have been, and unless relief is granted, will continue to be deprived by defendants, their agents and employees, acting under color of State law, of rights and privileges secured by the First, Fourth and Fourteenth Amendments to the Constitution of the United States. Plaintiffs seek preliminary and permanent injunctive relief and a declaratory judgment as to the unconstitutionality of defendants practices. The action is brought pursuant to 42 U.S.C. § 1981, 1982, 1983 and § 1985 and 28 U.S.C. §§ 1331, 1343 and 2201. The amount in controversy exclusive of interest and costs exceeds the sum of $10,000.00.

CLASS ACTION

2. This is a class action brought by the named plaintiffs on behalf of themselves and all other persons and organizations similarly situated. The plaintiffs and other members of the class are Black and White persons residing in the City of Philadelphia and are organizations with offices in the City of Philadelphia, expressing political views contrary to Defendants and advocating police responsibility to the community, who wish to enage in activities supporting their views, and otherwise to exercise rights of free speech, asembly and association protected by the First and Fourteenth Amendments to the U. S. Constitution. Plaintiffs and class they represent are deterred in the exercise of their constitutional rights of free speech, association and assembly, and security in their persons and residences and homes as secured by the

Fourth Amendment of the U. S. Constitution, by the practices of the Philadelphia Police Department in searching persons and residences without cause, arresting persons without cause and other related acts of harrassment and associated practices. The persons who have been subjected to the unlawful and unconstitutional actions of Defendants and their agents are so numerous as to make it impracticable to bring them all before the Court. There are question of law and fact common to the Class. A common relief is sought. The interests of Plaintiffs' class are adequately represented by the plaintiffs.

This class action is also brought by the Black plaintiffs on behalf of themselves and all other Black persons physically situated in the City and County of Philadelphia. The Black plaintiffs and the class they represent are prevented from enjoying their constitutional right of equal treatment under the law as afforded them by the Fourteenth Amendment to the U. S. Constitution by the practices of the Philadelphia Police Department through arrests on suspicion, blanket orders to stop Black males in certain vicinities without further descriptive phrases, beating without provocation, invasion of private meetings of Black groups, requiring identification without probable cause and other illegal practices hereinafter set forth with greater specificity.

PLAINTIFFS

3. The Black Panther Party is an unincorporated association of Black citizens formed for the purpose of organizing Black citizens to secure, protect and defend their full rights of citizenship. Plaintiff Reggie Schell is an officer of the said Black Panther Party, Philadelphia chapter. Individual plaintiffs are Black citizens of the City of Philadelphia, Commonwealth of Pennsylvania and some of them are members of the plaintiff Black Panther Party, Philadelphia chapter.

4. The Southern Christian Leadership Conference is an incorporated association formed by the late Rev. Martin Luther King, Jr. with its principle office in Atlanta Georgia and was formed for the purpose of defending and promoting the rights of Black citizens, and for the purpose of creating and forming a more christian lifestyle in the social and political structure of American life.

5. The Young Lords Party is an unincorporated association of Puerto Rican and Spanish and Chicano persons formed for the purpose of advancing and promoting the rights of the above said minorities and eliminating the prejudice and abuse in American life.

6. The plaintiff Frank Johnson resides at 5236 McKean Ave. Philadelphia, Pennsylvania and is a citizen of the Commonwealth of Pennsylvania.

7. The plaintiff Karen McNear resides at 5238 McKean Ave., Philadelphia, Pennsylvania and is a citizen of the Commonwealth of Pennsylvania.

8. The plaintiff Tony Britt resides at 212 South 60th Street, Philadelphia, Pennsylvania and is a citizen of the Commonwealth of Pennsylvania.

9. The plaintiff Carol Rogers resides at 3506 Powelton Avenue, Philadelphia, Pennsylvania and is a citizen of the Commonwealth of Pennsylvania.

10. The plaintiff Mary Rouse resides at 2422 North Howard Street, Philadelphia, Pennsylvania and is a citizen of the Commonwealth of Pennsylvania.

11. The plaintiff Council of Organizations on Philadelphia Police Accountability and Responsibility (COPAR) is an unincorporated association composed of constituent community organizations in the City of Philadelphia; Lay, Ecclesiastical and professional, whose purpose is the

achievement and creation of structural modes of community accountability of the police. The said constituent organizations exceed twenty in number.

12. The plaintiff Walter Perry resides at 428 Queen Lane, Philadelphia, Pennsylvania and is a citizen of the Commonwealth of Pennsylvania.

Plaintiffs, Thomas Dante, Walter Alfred Williams, Anthony Jones, Herbert Hawkins, Patricia Lucas, Dana Scott, William Brown, Robert Brodis Jones, William Overton, Linda Harber, Reggie Schell, Donna Marie Howell, Joseph T. Saunders, Barbara McGriff, Walter Perry and Robinetta Gladden, are citizens of the Commonwealth of Pennsylvania.

DEFENDANTS

13. The defendants are public officials of the city and county of Philadelphia, Commonwealth of Pennsylvania.

14. The defendant the Honorable James H. J. Tate, is the Mayor of the City of Philadelphia and is a citizen and resident of Philadelphia, and is responsible for the conduct of the executive and administrative work of the City and for law enforcement within its boundaries.

15. The defendant Fred T. Corleto is Managing Director of the City of Philadelphia and is charged under Section 5-100 of the Philadelphia Home Rule Charter (Hereinafter referred to as "Charter") with the exercising of supervision over all activities of those departments whose heads he appoints. Pursuant to Charter Section 3-206, the Managing Director with the approval of the Mayor appoints the Police Commissioner of the City of Philadelphia.

16. The Defendant Frank L. Rizzo is Police Commissioner of the City of Philadelphia and pursuant to Charter Section 3-404, serves at the pleasure of the Managing

Director and the Mayor of Philadelphia. His duties include supervision and control over activities of the Police Department.

17. The Defendant Arlen Specter is the District Attorney for the Commonwealth of Pennsylvania in the county of Philadelphia and is charged with the duty of criminal prosecutions in the city and county of Philadelphia.

FACTS

18. On Saturday, August 29, 1970 two policemen were shot, one fatally. The next day two policemen were wounded when they stopped a stolen car. Police information indicated no connection between the two incidents. However, the shock of these assaults produced hysteria in the Philadelphia police department which then generated panic throughout the Philadelphia community.

By Monday, August 31, 1970, the Police Commissioner, Defendant Rizzo herein declared the Police Department to be in full, "actual warfare" on "barbarians, creeps, yellow dogs, and Black militants."

Plaintiff Black Panther Party has agreed to participate in a Citizens Constitutional Convention, scheduled for the City of Philadelphia commencing September 4, 1970 and continuing through the 5th, 6th and 7th of September 1970, the purpose of the said Convention is to recommend amendments to the Constitution of the United States of America. The participation of all citizens to this Convention has been invited by the convenors thereof. The said Convention is to be held, in part, on the premises of Temple University, in agreement with the appropriate university officials and governing body.

The said Convention has been jeopardized by the actions of the defendants herein as more fully set forth in the averments of this Complaint.

19. Commencing Saturday, August 29, 1970 and continuing to the present time, the defendants, their agents, servants and employees, acting in concert and under color of state law and practice have caused the wholesale arrest of scores of persons, without warrants and without probable cause, and have ordered members of the Police Department to enter, break and enter, search and seize, and trespass upon the property, homes, and residences of citizens of the Commonwealth of Pennsylvania, without probable cause and in violation of the constitution and laws of the United States, the same being Black citizens of this Commonwealth.

20. On or about 6 A.M. on August 31, 1970, members of the Philadelphia Police Department, acting under color of the state law, conducted simultaneous raids on three premises known to said police department to be places where members, associates and allies of the Black Panther Party regularly work and reside. The three aforementioned premises are located at: 2935 Columbia Avenue, 3625 Wallace Street, and 428 Queen Lane, all in the City and County of Philadelphia, Commonwealth of Pennsylvania. These three raids were carried out in violation of the constitutional laws of the United States and were part and parcel of an unlawful and illegal conspiracy and/or undertaking by the defendants, their agent, servants and employees.

21. That the defendants have instituted the systematic practice of arresting Black citizens without warrants and without cause, of offering them the most brutal and degrading indignities such as causing them to remove their cloths and strip naked on the public highway, in violation of their right of privacy and of their right to be secure in their persons and bodies from unreasonable searches and seizures (see exhibit "A").

22. That the defendant Rizzo has openly, brazenly and illegaly threatened the physical extermination and acts of genocide against the Black community and has issued a so-called "challenge" as follows: "If a showdown is what they want, and if they have any guts, they will call me and set it up. We will even give them odds. If they say they'll have 10 men, we'll go with two. Do they have to be cowards? Aren't 5-to-1 odds good enough for them?"

"These creeps lurk in the dark and you never have a chance against them."

23. The searches by the police of homes and residences in the city of Philadelphia on the date in question were, upon information and belief conducted on the basis of unverified anonymous information and without proper and legal search warrants. Citizens of the City of Philadelphia have had their homes broken into by police officers purporting to conduct searches for arms, literature and posters, the said officers being armed and carrying various types of weapons on their persons while making the searches and using tear gas to rout the residents preparatory to making the said searches, which were and are illegal, unlawful and unconstitutional, being in violation of the Fourth Amendment of the United States Constitution.

24. On August 31, 1970 a petition for a writ of habeas corpus was presented in the Court of Common Pleas of Philadelphia County for the release from custody of Thomas Dante, Walter Alfred Williams, Anthony Jones, Herbert Hawkins, Patricia Lucas, Dana Scott, William Brown, Robert Brodis Jones, William Overton, Linda Harper, Reggie Schell, Donna Marie Howell, Joseph T. Saunders, Barbara McGriff, Walter Perry, Robinetta Gladden, all of whom were charged with assault with intent to kill, violation of the Uniform Firearms Act and conspiracy; and all of whom were arrested by the police at

6 A.M. on August 31, 1970. An order for their release upon $500.00 bail was signed by the Hon. Thomas Reed, Judge of the Court of Common Pleas of Philadelphia County. Thereafter, and in a manner contrary to law, custom, usage, practice and in violation of all precepts of Due Process and Equal Protection of the Laws, the said Writ was not honored by the Philadelphia Police Department and the plaintiffs above named were retained, despite the Writ, in unlawful custody and remain so confined. The defendant Rizzo publicly stated: "The Philadelphia Police Department won't tolerate it here, if the Courts and everybody else do." [sic]

25. Following the raids described herein, which produced no evidence pertaining to the previous assaults on police officers, the Philadelphia Police Department, with the approval of the Defendant Tate, Mayor of Philadelphia, instituted the following practices:

(a) In areas principally inhabited by Black Citizens, every Black male is stopped, searched and required to identify himself. No warrants are sought or obtained for this purpose. The searches take place on the public highways, in Black owned stores, on the premises of Black operated businesses;

(b) Black males are arrested on sight, without warrant or probable cause. Some are released in a few minutes, some have been held up to thirteen hours without charges, bail, counsel.

(c) The businesses, residences of Black Citizens are invaded and searched at all hours of the day and night at gunpoint terrifying men, women and children. No warrants are sought or obtained for this purpose;

(d) The Defendant Mayor has purported to authorize house-to-house searches without legal authority.

All of the abovesaid practices continue to the present time and Defendants have declared their intention to continue said practices for an indefinite time.

26. Fourteen members of the Plaintiffs' class were arrested at 6 A.M. on August 31, 1970 and were held without hearing until 7 P.M. At the said hearing, bail in the exorbitant amount of $100,000.00 was demanded of each of the plaintiffs herein, defendants in the State criminal proceeding, said bail was fixed without reference to the offenses charged, the likelihood of their further appearance or any other ascertainable standard or criteria, but was imposed as "preventive medicine" by the Court.

27. Thereafter, upon application for the reduction of excessive bail, the Court of Common Pleas ordered that only one of the fourteen plaintiffs (defendants) would be permitted to apply for reduction of bail each day.

28. The Police Commissioner, defendant Rizzo, has threatened a shootout with a group of persons identified only as "black militants" thereby terrorizing the Black Citizens of the City of Philadelphia and denying them the security of their persons, homes and property.

29. The aboversaid Police commissioner has made further public statements designed to frighten, and "chill", prospective delegates to the scheduled Convention and to silence complaints or expressions of grievance against the government.

30. There is between the parties hereto an actual controversy as set forth above. By reason of the conduct of the Defendants, Plaintiffs and the class of citizens they represent are terrorized; afraid to engage in ordinary commerce, social events and peaceful assembly, and to discuss their grievances. The plaintiffs are suffering irreparable injury thereby, and are threatened with irreparable injury in the future by reason of the acts herein complained of. Furthermore, the chilling effects upon the exercise of First Amendment rights derives from the abovesaid acts of defendants.

31. Upon information and belief, plaintiffs aver that the arrests of the fourteen persons now confined to prison was unlawful in that the said arrests were without warrant and predicated solely upon plaintiffs' resistance to the illegal, unauthorized, and forcible entry into their residences by the police.

32. Plaintiffs have no plain, adequate or complete remedy to redress the wrongs which deny them their rights secured by the First, Fourth, Eighth and Fourteenth Amendments of the United States Constitution and the laws thereof; any other remedy to which plaintiffs and those similarly situated could be remitted would be attended by such uncertainties and delays as to deny them substantial relief, involve a multiplicity of suits and cause further irreparable injury, damage and inconvenience to the plaintiffs and those similarly situated.

33. In the course of these events, and continuing to the present time, the members of the class which plaintiffs represent have been subjected to indiscriminate physical and verbal abuse by members of the Philadelphia Police Department acting pursuant to the orders of the defendants herein, including but not limited to threats, intimidations, harrasments and beatings, all of which have resulted in a fear and pervasive terror throughout the community which has all but brought to a halt the ordinary affairs of life within the community and rendered impossible the daily pursuits of life, liberty and happiness.

34. The Philadelphia Police Department, its individual members, agents and employees of defendants, together with persons unknown to plaintiffs, acting under color of law, have subjected and are subjecting plaintiffs and members of their class to a pattern of conduct consisting of violence, intimidation and humiliation, directed at plaintiffs and members of their class solely on account of

race, in denial of rights, privileges and immunities guaranteed plaintiffs and members of their class by the Constitution of the United States.

35. Said systematic pattern of conduct consists of a large number of individual acts of violence, intimidation and humiliation visited upon members of plaintiffs' class by members of the Philadelphia Police Department, agents and employees of defendants, acting in concert with persons unknown to plaintiffs and under color of law. Said acts of violence, intimidation and humiliation, while carried out under color of law, have no justification or excuse in law, and are instead gratuitous, illegal, improper and unrelated to any activity in which police may appropriately and legally engage in the course of protecting persons or property or ensuring civil order.

36. Despite the fact that they knew or should have known of the fact that this pattern of conduct was and is being carried out by their agents and employees, the Philadelphia Police Department, defendants, have taken no step or effort whatever to order a halt to this course of conduct, to make redress to injured plaintiffs and members of their class, or to take any disciplinary action whatsoever against any of their employees or agents, and defendants have in fact praised and commended their agents and employees, such praise and commendation having the effect of encouraging their agents and employees to continue this pattern of conduct.

37. The Philadelphia Police Department and its individual members, agents and employees of defendants, acting under color of law, continue to subject plaintiffs and members of their class to a pattern of conduct consisting of violence, intimidation and humiliation directed against plaintiffs and members of their class solely on account of race

38. Defendants know or should know of said continuance and are either ratifying it or if not ratifying it, have so lost control over the conduct, practices and policies of their employees and agents, the Philadelphia Police Department and its individual members, as to make effective law enforcement impossible. Thus, plaintiffs and members of their class have suffered and continue to suffer immediate and irreparable injury for which there is no adequate remedy at law.

39. Defendants, acting individually or in concert, under color of law, have for many years directed or permitted and are directing or permitting their agents and employees, the Philadelphia Police Department, to engage in a systematic pattern of conduct, consisting of violence, intimidation and humiliation, directed against plaintiffs and their class solely on account of race, in violation of due process and equal protection of laws guaranteed to plaintiffs and their class by the United States Constitution.

40. Said systematic pattern of conduct consists of a large number of individual acts of violence, intimidation and humiliation visited upon members of plaintiffs' class solely on account of race, by members of the Philadelphia Police Department, agents and employees of defendants, acting under color of law. Said acts, while carried out under color of law, have no justification or excuse in law, and are instead, gratuitous, illegal, improper and unrelated to any activity in which police may appropriately and legally engage in the course of protecting persons or property or ensuring civil order.

41. Plaintiffs and the members of their class have for many years not enjoyed full and equal participation in the political, economic and social affairs of the city of Philadelphia, in derogation of the rights guaranteed them

by the Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution of the United States. The only way in which plaintiffs and their class can achieve full and equal participation in the political, economic and social affairs of the city of Philadelphia is by peaceful and vigorous exercise of the rights guaranteed them by the First, Fourth, Fifth and Sixth Amendments to the Constitution of the United States.

42. Said pattern of conduct, carried out under color of law by defendants' agent and employees, the Philadelphia Police Department, has resulted and continues to result in the punishment of plaintiffs and their class for, and the attempted deterrence of plaintiffs and their class from, peaceful exercise of the rights guaranteed them by the First, Fourth, Fifth and Sixth Amendments to the Constitution of the United States.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that this Court advance this cause on the docket and order a speedy hearing of this action according to law and after such hearing:

(a) Grant plaintiffs and members of their class similarly situated a temporary restraining order, a preliminary injunction, and upon final hearing, a permanent injunction enjoining defendants, their agents, servants, workmen, and employees, and all persons in concert and participation with them who obtain notice of the order as follows:

(1) From continuing or resuming the practice of making unlawful arrests, detentions, searches of the persons and residences, and causing the public disrobing of the plaintiffs and others similarly situated, because they are of the Black race and/or for their political views and activities, in violation of the First, Fourth and Fourteenth Amendments of the Constitution of the United States;

(2) From continuing the practice of prosecution of the following adult plaintiffs: Thomas Dante, Walter Alfred Williams, Anthony Jones, Herbert Hawkins, Patricia Lucas, Dana Scott, William Brown, Robert Brodis Jones, William Overton, Linda Harper, Reggie Schell, Donna Marie Howell, Joseph T. Saunders, Barbara McGriff.

(3) From the filing of a petition of delinquency in the Juvenile Court of Philadelphia against plaintiff Robinetta Gladden.

(4) From continuing or resuming the practice of harassing, threatening, intimidating, or otherwise interfering with plaintiffs or other similarly situated because they are of the Black race and/or their political views and activities;

(5) Promulgating, publishing, distributing or declaring any so-called "Emergency Proclamation" which will have the effect of vitiating, interfering with, restraining, impeding rights guaranteed by the First Amendment of the United States Constitution, and more particularly from declaring a "limited emergency" in the vicinity of the Revolutionary Peoples Constitutional Convention of September 4, 5, 6, 7, 1970, limiting the size of outdoor gatherings within the City of Philadelphia, pursuant to the authority granted under the Code of General Ordinances § 10-800.

(6) From holding in custody and confinement the plaintiffs above named in ¶ (2) and (3), supra.

(7) From interfering with, impeding, obstructing, harrassing, intimidating or otherwise threatening persons attending, supporting, participating in, doing business with, or engaging in commerce or trade with, or reporting on the said Convention.

(8) From taking any other action against the plaintiffs in connection with protected activities.

(b) To hold a hearing for the purpose of fixing reasonable bail for the plaintiffs named in ¶ (2) and (3), supra.

(c) That pursuant to the Equity power of this Court, an order issue ordering and directing that special Master be appointed receiver of the Police Department of the City of Philadelphia, with full power to direct and control all affairs of that department and its members, in order that law enforcement in Philadelphia not further deteriorate until such time as that department can be so reorganized so as to protect the lives and property of all citizens of Philadelphia equally and impartially without regard to race.

Prayer for Relief

(d) That said special Master be directed to hold public hearings at which plaintiffs, defendants and all other interested members of the public shall have the opportunity to present plans for the rehabilitation of the Police Department, under the supervision of this Court.

(e) That the Court grant plaintiffs their costs and reasonable counsel fees, together with damages for injuries, deprivation of Constitutional rights, the loss, destruction and unlawful detainer of their property including but not limited to office supplies and equipment, cash, personal items, etc., and such other and further relief as may be equitable and proper.

Respectfully submitted,

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Affidavit of Mary Rouse

AFFIDAVIT OF MARY ROUSE

MARY S. ROUSE, of 2422 North Howard Street, Philadelphia, Pennsylvania being duly sworn according to law deposes and says that she is an individual plaintiff in this action and that the averments in the complaint and in the motions for temporary restraining order and preliminary injunction are true and correct to the best of her knowledge and belief; and she does further state that unless the temporary restraining order as prayed for is issued, plaintiff's constitutional rights will be impaired, adversely affected and jeopardized as a result of which they will suffer irreparable injury and damage.

MARY ROUSE

Sworn to and subscribed before me this 31st day of August, 1970.

Notary Public

AFFIDAVIT OF LAFAYETTE BURTON

My name is Lafayette Burton, I live at 3927 Powelton Avenue. I own a house at 1416 N: Wanamaker Street. My wife and I are separated. Only my wife and children reside at the Wanamaker Street address.

On Sunday, August 30, 1970, at 10:30 a.m. a neighbor, Mr. Allen Holmes of 1424 N. Wanamaker Street called me at my Powelton Avenue apartment and told me that the Philadelphia Police had smashed the lock on the front door of my house at N. Wanamaker Street, and entered with drawn guns, flak jackets and shotguns.

I immediately dressed and drove my car to N. Wanamaker Street. As I entered my house I observed the smashed lock on the front door, the torn out molding along the right-hand side of the door jam, and large pieces of plaster from the wall laying on the hardwood floor. There was various items of police equipment laying about my living room (shotguns, flak jackets and uniform caps). My living room looked like a battleground.

I was greeted by about ten police officers, headed by a Captain Donnelly, who as he informed me, was from the North West Detective Division.

My intense anger was rather apparent. I asked Captain Donnelly what he and his men were doing there in my house. He answered "we are conducting a police investigation." I then asked to see the search warrant authorizing them to forcefully enter my house. He said that he didn't have one, and he didn't need one. He then told me that I had a Ruger Single-Action Revolver registered in my name, and asked me if I still had it. I answered "yes, is that what you are looking for?" He said "no."

I then started upstairs to the second floor of the house that I own. Captain Donnelly called me back down and said "there is no need in your going up there and disturbing those men, (the police). I am the one you have to deal with."

I ignored him and continued on upstairs. There were two detectives and two patrolmen going all thru my wife and children's personal possessions. I returned to the first floor and told Captain Donnelly that with no search warrant I demand that he and his men stop their search and leave my house. This time he ignored me. Then two patrolmen came up from my basement where they had been searching, and joined the others who had by this time gathered in the living room.

They all lined up along my couch in the living room holding their flak jackets and shotguns and looking rather sheepish. I asked them what they were looking for and what had they found. I received no answer.

Captain Donnelly then informed me that he was going to take me in for questioning. I asked if he had a warrant for my arrest. He answered no. I then told him that if he just wanted to ask me questions that he could do it here in my house since he had already broken in, and that I didn't want to go "downtown." He said that he was taking me anyway. I told him that if he did I would not cooperate at all with the police and that I would not answer any questions.

Just then my telephone rang and as I answered the kitchen extension the police answered the living room extension. They stayed on the line during the entire conversation. The caller was my 14 year old daughter.

When I hung up, Captain Donnelly called his superiors and told them that he was bringing me in. His superiors told him that it was not necessary for him to bring me in for questioning. Captain Donnelly hung up the telephone and as he and his men prepared to leave I asked him why had he come here in the first place. He said that he was investigating a murder and my name had

turned up. He refused to answer any other questions. He then informed me that a carpenter would be here soon to fix my front door and anything else that was damaged and that a policeman would be stationed outside until the door was secured. As he was leaving, I noticed that the first floor living room window was open. I asked Captain Donnelly if he or any of his men had opened it. He said no. I then asked why they didn't come thru the window, instead of smashing the front door. He said "we don't like to go thru windows. Then they left.

LAFAYETTE BURTON

Sworn to and Subscribed before me this 3rd day of Sept., 1970.

Notary Public
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires April 9, 1973

AFFIDAVIT OF ROXANNA SMITH

My name is Roxanna M. Smith, a Black mother, residing at 1327 South Ruby Street, in the City of Philadelphia, Commonwealth of Pennsylvania, for the past 34 years.

On Tuesday, September 1, 1970, I received a call from my son David Monroe Smith, 15 years old, that he and some of his friends had undergone an ordeal with the Philadelphia Police Department.

As they were walking down 48th and Fairmount Avenue, after attending a meeting, they were stopped by a patrol wagon, which blasted lights on them. Two police officers jumped out of the car and told the youths to stand up against the wall. They were each searched and told to keep moving.

Before they could get to the corner approximately 15 police cars and patrol wagons' lights were turned on. The police jumped from these vehicles, pistols and rifles in hand. They were thrown against the wall and patted down by several policemen. One of the police officers, who was holding a rifle, told the youths that if they thought what happened to the Panthers when they had to strip in the street was bad, they wouldn't even have the chance to undress, because if one of them even so much as turned around he would "blast all their asses off". One youth was kicked and punched by this same police officer and one youth was smashed in the face with the hat he was wearing.

After this took place, they were told to get off the street and not be seen in that vicinity again. My son went to the home of one of his friends', George Johnson, who was with him at the time of the incident.

My son called me at 12:15 A.M. and asked me to come get him because he was afraid of being stopped in the street again.

ROXANNA SMITH

Sworn to and Subscribed this 3rd day of September, 1970.

My Commission Expires August 17, 1971

AFFIDAVIT OF DAVID WATSON

My name is David Watson. I am 33 years old. I have lived in Philadelphia 27 years. My present address is 5238 McKean Avenue. I have lived there for two years. I am separated from my wife. I have two children aged 13 and 11. I have worked at the Pharmacologist Laboratories at 4901 Stenton Avenue for the past 11 months as a department head for the distribution area.

At 5:45 Monday morning, August 31, 1970, I awoke at home to shouting in front of my house. I went to the window and saw the police on Queen Lane. One policeman shouted, "Get down and stay behind the car," and another shouted, "Shine the light on the second floor." The building I live in is on the corner of McKean and Queen Lane, and my apartment is on top of the Black Panther office at 428 Queen Lane.

From the window I saw two officers behind squad cars with rifles or shotguns. I saw lights which were shining over the whole building. The police were shining them from the cars. I ducked back from the window and got our son Roland out of his bed and put him in the bed with Vivian, Vivian Ayers. I heard the noise of the police breaking into the Panther Party office, two floors below, on the street level. I heard the windows breaking and vibrations through pipes which sounded like they were throwing things around and against the pipes. I was up the whole time, crawling around on the floor and looking out of the window.

During the time the police were behind the cars, five minutes after they first pulled up but before they entered the building, a policeman yelled, "Why don't we shoot into the second floor." (I live on the second floor.) Nothing happened. Someone up on the third floor put on a light; the police told them to leave the light on and not pull the

shades. The police told the same thing to people on the first floor who had also turned on a light.

I was on the floor looking out the window the majority of the time. I saw the police go into the office. They broke the window and walked in. I saw and heard the policeman say, "Let's shoot into the second floor window."

There were two sets of officers doing this. The first set had six squad cars and two vans. They came up, broke in, they talked with someone on the radio who told them to go to Columbia Avenue (I heard this over the radio from my window). The police on the outside of the cars and they had probably turned the radios up. The first set were there until 6:15 or 6:20. They were inside the building for thirty to thirty-five minutes. When they got ready to leave, one of the officers yelled, "All right guys, let's saddle up." They left one van and a squad car behind.

Within minutes after the first set of police left, another van and four squad cars and one plain car arrived. They proceeded to go into the Panther office. About 8 o'clock, a sanitation truck came and the police loaded furniture, clothing, and three boxes with paper in them from the Panther office onto the truck. I didn't see any people taken out.

At 8:15 I left the house and walked across the street to the cleaners. The police were still loading the sanitation truck with stuff from the office and directing traffic. I went to work. At noon I came back and saw a squad car on the street and two men boarding up the windows of the Panther office.

DAVID WATSON
September 2, 1970

WITNESS

Affidavit of Vivian Ayers

AFFIDAVIT OF VIVIAN AYERS

My name is Vivian Ayers. I live at 5238 McKean Avenue, Philadelphia. I have lived there almost seven years. I am divorced. I work at Comprehensive Group Health Services, 2539 Germantown Avenue. I have worked there for eight months as a secretary. My home telephone number is VI 8-3235.

I awoke about 5:45 Monday morning, August 31, 1970, to hear car doors slamming and to see floodlights coming in the bedroom window. David Watson then explained to me to lay still, because the police were outside, with guns. He had gotten up and looked out the window. We put our baby in bed with us. I then heard someone say, "Let's fire into the second-floor window." But no one did. At that point we remained silent and still and heard them break into the Black Panther office, which is almost directly under us at 428 Queen Lane. I know it was the Black Panther office because once I got up and looked out the window. He waited until we felt it was safe to get up and that was when we realized that there was no shooting and there was so much noise that it sounded as if they were actually tearing down the whole office. We could hear glass breaking, even some of the pipes in our apartment were shaking because they connect the whole building. We got up and we both got ready for work and we got the baby ready for the babysitter. And one last quote from the police: "Okay, guys, let's saddle up."

In the process of getting dressed we saw the police coming and going from the Panther office.

I saw a policeman and two men in workmen's clothing throw furniture, fabric like clothing, papers, into an empty city truck which had "City of Philadelphia, Department of Sanitation" printed on it.

Affidavit of Vivian Ayers

When we were out on the street getting into the car to go to work, we saw them talking to the Father at the Catholic Church across the street, St. Catherine's, and to the manager of Lido Cleaners, also across the street.

It was about an hour that they were in the office making noise, breaking things up.

It was about 8:00 a.m. that we left for work.

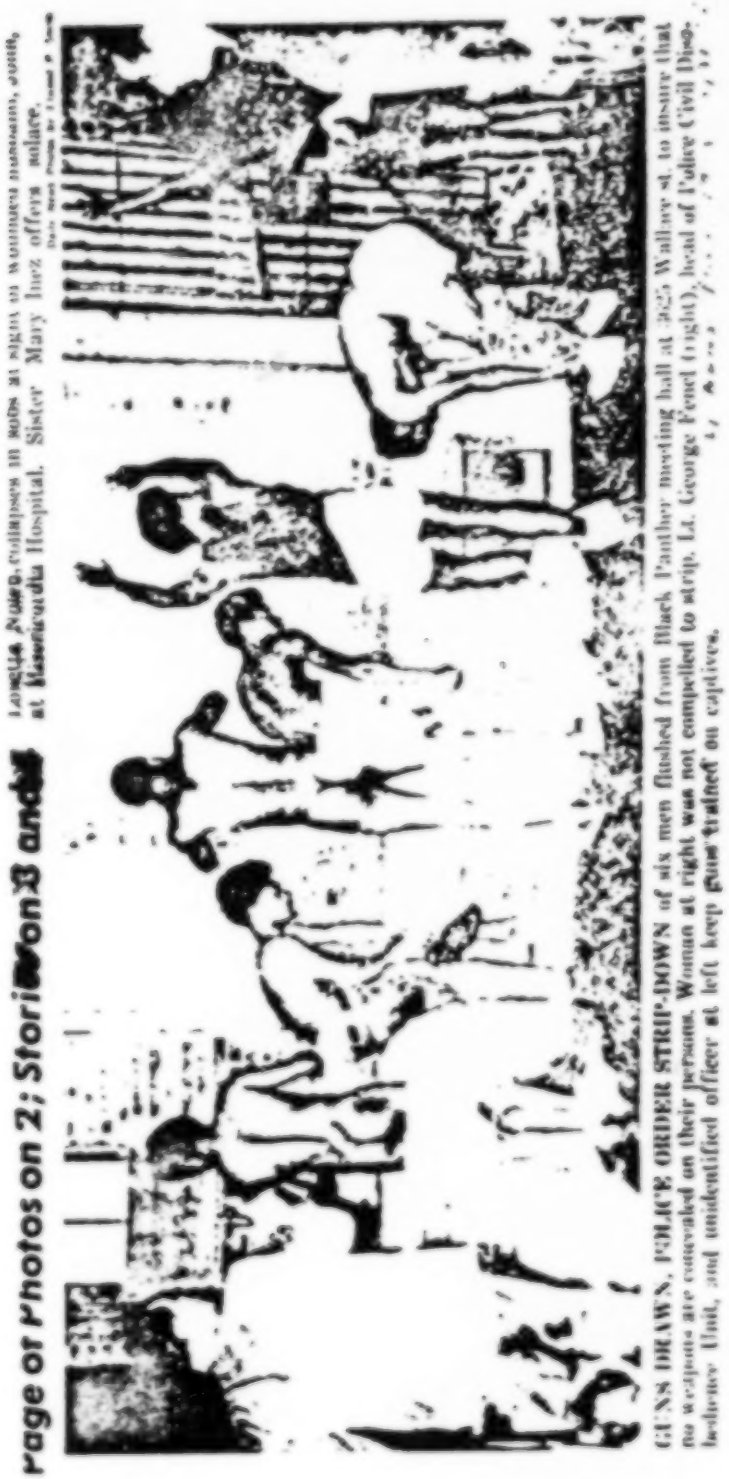
September 2, 1970

VIVIAN AYERS

HOLLY WRIGHT
Witness

BEST COPY AVAILABLE

Exhibit to COPPAR Complaint



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GUNS DRAWN, POLICE ORDER STRIP-DOWN of six men flushed from Black Panther meeting hall at 3625 Wallace st. to insure that no weapons are concealed on their persons. Woman at right was not compelled to strip. Lt. George Fencl (right), head of Police Civil Disobedience Unit, and unidentified officer at left keep gun trained on captives.

Defendants' Motion to Dismiss Plaintiffs' Complaint

DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT

Defendants move the Court to dismiss the plaintiffs Complaint on the following grounds:

1. Plaintiffs' cause of action is moot because the Citizens' Constitutional Convention convened by the Black Panther Party was held without incident at Temple University, Philadelphia, Pennsylvania, on September 5, 6 and 7, 1970, and the delegates to the Convention came and went without police harassment and no "emergency proclamation" was declared.

2. Plaintiffs have failed to state a cause of action in that plaintiffs are not entitled to an injunction interfering with criminal proceedings in the Pennsylvania State Court.

3. Plaintiffs have failed to state a cause of action in that the Federal District Court cannot act as a Receiver or Trustee of the Philadelphia Police Department.

GEORGE J. IVINS
Deputy City Solicitor

LEVY ANDERSON
City Solicitor
Attorneys for Defendants

ANSWER OF TATE, RIZZO AND CORLETO

First Defense

1. Paragraph 1 is denied.

2. Paragraph 2 is denied.

3. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment in Paragraph 3 and, accordingly, this Paragraph is denied.

4. Paragraph 4 is admitted.

5. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment in Paragraph 5 and, accordingly, this Paragraph is denied.

6. Paragraphs 6, 7, 8, 9, 10 and 12 are admitted.

7. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment in Paragraph 11 and, accordingly, this Paragraph is denied.

8. Paragraphs 13, 14, 15, 16 and 17 are admitted.

9. Paragraph 18 is admitted in part and denied in part. It is denied that police information indicated no connection between the two incidents, and it is further denied that the assault abovementioned produced hysteria in the Philadelphia Police Department which generated panic throughout the Philadelphia community. As to the averments concerning the Black Panther Party's participation in a Citizens Constitutional Convention the defendants are without knowledge or information sufficient to form a belief as to the truth of the averments and the same are denied. It is further denied that any actions by defendants have jeopardized the aforementioned Convention.

10. Paragraph 19 is denied.

11. Paragraph 20 is admitted in part and denied in part. It is admitted that on or about August 31, 1970 members of the Philadelphia Police Department conducted search and seizure operations at the 3 premises mentioned in plaintiffs' Complaint. The remaining averments of the Complaint in paragraph 20 are denied.

12. Paragraph 21 in denied.

13. Paragraph 22 of the Complaint is admitted in part and denied in part. The averments attributed to defendant Rizzo are admitted. All other averments are denied.

14. Paragraph 23 in denied.

15. Paragraph 24 is admitted in part and denied in part. It is admitted that those persons mentioned in Paragraph 24 of plaintiffs' Complaint were arrested. All other averments of said paragraph are denied.

16. Paragraph 25 of the Complaint is denied.

17. Paragraph 26 is admitted in part and denied in part. It is admitted that fourteen(14) persons were arrested on August 31, 1970 and thereafter received a hearing, at which time they were held in bail in the sum of $100,000 each. As to the remainder of the averments of the said paragraph, defendants are without knowledge or information sufficient to form a belief as to the truth of the same and, accordingly, they are denied.

18. Paragraph 27 is admitted.

19. Paragraphs 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41 and 42 of the Complaint are denied.

Second Defense

The Complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

The Complaint fails to state a claim for equitable or declaratory relief.

FOURTH DEFENSE

The Court lacks jurisdiction over the claim.

FIFTH DEFENSE

The averments in plaintiffs' Complaint and requests for relief are now either moot or not within the jurisdiction of the Court over the subject matter.

SIXTH DEFENSE

Plaintiffs have failed to exhaust their administrative, state and other Federal Court remedies.

WHEREFORE, defendants pray that the Complaint be dismissed with costs assessed against the plaintiffs.

GEORGE J. IVINS
Deputy City Solicitor

LEVY ANDERSON
City Solicitor
Attorneys for Defendants

OPINION

FULLAM, *J.* March 14, 1973

In two separate but related civil rights actions, certain individuals and groups, acting on behalf of minority citizens and residents of Philadelphia, seek various forms of relief against the Mayor and police officials of the City, on the basis of alleged widespread violations of the constitutional rights of minority citizens, by the police of the City of Philadelphia.

From a procedural standpoint, the record in these cases is somewhat anomalous: plaintiffs and their respective counsel are different in the two cases, and have proceeded independently. However, both groups of plaintiffs purport to act on behalf of essentially the same class of plaintiffs. Although the specific relief sought in each case is different, both sets of plaintiffs urge that a pattern of unconstitutional behavior on the part of the police is shown by their evidence of numerous specific instances of such alleged misconduct; each group relies upon a different set of specific instances as examples alleged to establish the pattern. Since I have heard all of the evidence in both cases, it would be difficult, and in my opinion improper, in view of the nature of the claims, to dispose of each case separately, based upon its own limited record. The defendants in both cases are essentially the same, and are represented by the same counsel in both cases.

This Court's disposition of these cases has already been delayed too long. Much of this delay is squarely the responsibility of the Court, and is attributable to other pressing demands of its case load. In partial justification for this unfortunate delay, it may be noted that the records of the two cases are extremely complex, the issues involved are subtle and somewhat novel, and the re-

quired decisions touch upon sensitive and emotion-filled aspects of community life.

Another factor requires mention. During the pendency of these two actions before the undersigned, a third case filed by different plaintiffs on behalf of the same class of plaintiffs, seeking similar relief, was pending before another member of this Court. That case, which was instituted after the *Goode* case but before the *COPPAR* case, eventuated in a consent decree granting injunctive relief, dated December 18, 1972. The defendants in all three cases are essentially the same, and all have been represented throughout by the City Solicitor's office. Nevertheless, at no time have defense counsel meaningfully addressed themselves to the class action issues involved, nor to questions of *res judicata* or collateral estoppel which may be involved.

A brief summary of the issues in all three cases will provide a starting point for analysis: In the *Goode* case, Civil Action No. 70-491, plaintiffs contend that certain police officers of the City of Philadelphia are biased against Negroes and other minority groups, and habitually violate their legal and constitutional rights in the course of carrying out their police duties; that the proclivities of these officers are well known to their superiors in the Department; that the persons in control of the supervision of the Police Department, by failing to take appropriate disciplinary action, have condoned these illegal and unconstitutional activities, as a matter of policy. Plaintiffs further contend that there is no adequate machinery for dealing with civilian complaints against the police, and that departmental resistance to the creation or implementation of adequate complaint procedures justifies the conclusion that it is the policy of the Department to condone racially discriminatory actions by the police. Plaintiffs seek two kinds of relief in this action: removal or other appropriate disciplinary

action in the cases of certain named policemen; and establishment of appropriate machinery to deal with civilian complaints against police.

The COPPAR plaintiffs (Civil Action No. 70-2430) allege widespread and systematic violations of the constitutional rights of Negroes and other citizens by the police in the routine performance of their duties, with the express or tacit approval of their superiors. Plaintiffs ask the Court to appoint a "receiver" or similar official to supervise the Police Department (presumably, sweeping injunctive relief, and the appointment of a master to supervise enforcement of the decree), to prevent further violations. This case was originally precipitated by certain incidents involving police raids on buildings thought to be occupied by members of the "Black Panther" Party, threatened interference with a proposed convention of that group of the City, and the alleged holding of certain black militants without probable cause and in excessive bail. At an earlier stage, this Court entered a temporary restraining order which alleviated some of the immediate problems; eventually, this order expired by its own terms, and has not been renewed.

The plaintiffs in *Goode* presented evidence of ten specific instances of alleged violations, together with a mass of evidence, including expert testimony, dealing with the alleged inadequacies of existing complaint procedures; the defendants produced some countervailing evidence on both subjects. The *COPPAR* plaintiffs produced evidence relating to some 30 additional specific instances of alleged misconduct, and a limited amount of evidence challenging the complaint procedures; the defendants presented evidence to the contrary in most, if not all, of the instances alleged.

In the third action, *Alexander, et al.* v. *Rizzo, et al.*, Civil Action No. 70-992, the principal charge of discrimi-

nation against blacks alleged in the complaint was the practice of widespread arrests "for investigation," and incidental indignities related thereto, apparently triggered by a particular incident involving the murder of a Philadelphia police officer. The injunctive decree in that case which was entered "without hearing or trial and upon the stipulation of the parties" embodies detailed provisions governing police contacts with civilians based upon less than probable cause for arrest.

The Court's findings of fact are set forth below. They reflect evaluations of credibility which give appropriate weight, on the one hand, to the anti-police bias of many of the complaining witnesses, and their emotional involvement in the incidents, and, on the other hand, to the natural reluctance of the accused officers to concede any misconduct on their part. Whenever the merits were substantially in doubt, the defendants were accorded the full benefit of the presumption that the police officers acted properly.

I. FINDINGS OF FACT

A. *General*

During the period covered by the evidence produced at the hearings in these cases, James H. J. Tate was Mayor of Philadelphia, and Frank L. Rizzo was Police Commissioner. Mr. Rizzo is now the Mayor.

During the same period, Fred T. Corleto, was Managing Director of the City of Philadelphia; Hillel S. Levinson is now the Managing Director. Under § 5-100 of the Philadelphia Home Rule Charter, the Managing Director is charged with responsibility for supervising all activities of those departments the heads of which are appointed by him. Under § 3-206 of the Charter, the Managing Director, with the approval of the Mayor, appoints the Police Commissioner.

The Police Commissioner, under Charter § 3-404, serves at the pleasure of the Managing Director. He has responsibility for supervision and control over activities of the Police Department. Charter § 5-200(b) provides that the police Department "shall discipline the Philadelphia police."

Defendant Robert G. Selfridge is Deputy Police Commissioner in charge of the uniformed forces of the Police Department. Defendant William Murphy is Chief of the Highway Patrol and exercises supervision and control over its members. The chain of command within the Highway Patrol is: Captain, lieutenant, sergeant, and patrolman.

During the period covered by the evidence, Anthony Defazio was a police officer of the City of Philadelphia, having been appointed on December 28, 1965. He served as a member of the Highway Patrol. Shortly before the conclusion of the hearings in these cases, he was retired on disability, and is no longer an active policeman.

John D'Amico is a Philadelphia police officer, a member of the Highway Patrol, having been appointed to the Department on June 26, 1967.

B. *Existing Complaint Procedures*

As a general practice, no record is made by the Police Department of any civilian complaints, unless submitted in writing. There are no forms available to citizens for filing such complaints. When a written complaint is filed, it is supposed to be recorded by the police on a "complaint and incident report" form (No. 75-48); but the general practice at the district level is not to record such complaints.

When a complaint has been recorded, an investigation is made by Police Department inspectors assigned to Staff Inspection Headquarters. The investigation in-

cludes obtaining a statement of the complainant and the officers involved. The Police Department controls the investigation and does not assist the complainant in obtaining witnesses. The tendency is to minimize, and seek avoidance or withdrawal of complaints.

Police officers accused of misconduct do not submit to interviews or give statements relating to the charges to anyone other than the police investigators.

Police officers accused of misconduct never submit to polygraph tests. While there is no departmental regulation on the subject, the Fraternal Order of Police has a fixed policy of refusing to lend its support or provide counsel for any police officer who submits to a polygraph test, and this policy is well-known to the Police Department. In consequence, as above stated, police do not submit to such examination. Nevertheless, complainants against police officers are frequently requested to, and do, submit to polygraph examinations, unaware that the accused officer will not be so examined. No records are kept of the manner in which the polygraph test is administered; only a result is noted.

When an officer is under investigation, his personnel file is usually examined. Commendations from the Commissioner and commendatory letters from citizens are always placed in an officer's personnel file. Letters of complaint are not. If an officer has been brought before a police board of inquiry, that fact is noted in his personnel file. If there are several such instances, some further investigation as to the basis for the previous board of inquiry contacts is usually made.

The investigators prepare a report for the Police Commissioner. Previous incidents of alleged misconduct are not mentioned in the report, unless there are several of them and they have been investigated.

The Commissioner decides, in his sole discretion, whether an officer should face trial before the Police

Board of Inquiry for a violation of the Police Department Disciplinary Code. It is generally believed within the Department that the Commissioner refers cases to a board of inquiry for trial only if he is already convinced that the accused officer is guilty and should be disciplined.

A board of inquiry consists of three police officers. The complaint is presented by a police "advocate" at a trial-type hearing. Upon a finding of guilty, penalties (reprimand, suspension or dismissal) are recommended to the Commissioner. The final decision with respect to imposition of penalties rests with the Commissioner. Dismissals are reviewable by the Philadelphia Civil Service Commission.

Counsel for the complainant (other than the "police advocate") is not permitted to participate in the hearing before the Board of Inquiry. Accused police officers are represented by counsel.

The entire departmental disciplinary procedure is directed primarily to violation of departmental rules and regulations, rather than to alleged violations of legal or constitutional rights of civilians.

For the most part, a civilian complainant against a police officer is not informed of the final disposition of his complaint.

C. *Commission on Human Relations*

The Philadelphia Commission on Human Relations is an independent commission established by § 3-100(e) of the Philadelphia Home Rule Charter. Its powers and duties are to ". . . enforce all statutes and ordinances prohibiting discrimination against persons because of race, color, religion or national origin . . ." and to ". . . conduct educational programs to promote the equal rights and opportunities of all persons regardless of their race, color, religion or national origin" (Charter § 4-700).

The Commission receives complaints from citizens alleging misconduct by the Philadelphia Police, but the Commission has no investigatory or enforcement powers with respect to such complaints.

Until mid-1969, the Commission would forward such complaints to the Police Department, the Department would investigate and report the results of its investigation to the Commission; and the Commission would advise the complainant of these results. Beginning in mid-1969, the Police Department terminated its practice of providing the Commission with a report of the investigation; instead, a summary was provided. The Commission thereupon terminated its practice of handling citizen complaints against police. Instead, it directs complainants to other agencies, such as Philadelphians for Equal Justice, Community Legal Services, the American Civil Liberties Union, or the District Attorney's office.

D. *Police Advisory Board of Philadelphia*

The Police Advisory Board of Philadelphia was an agency established in 1958 by the then Mayor of Philadelphia, to hear complaints by citizens against Philadelphia police involving alleged violations of constitutional rights or other mistreatment. The Board then made recommendations to the Mayor in each case.

In March of 1967, the Court of Common Pleas of Philadelphia enjoined the Board from further functioning, and the Board became inactive. The Supreme Court of Pennsylvania reversed the lower court decision in June of 1969. On December 22, 1969, the Board was dissolved by Mayor Tate. During the period of its operations, the Board had no investigative resources, and relied primarily on the investigations made by the Police Department. Because of uncertainty as to whether the Board had subpoena power, it never attempted to exercise such power.

E. *Criminal Prosecution of Police Through District Attorney's Office*

The District Attorney is responsible for the prosecution of all persons charged with crimes, as defined by local and state law, within the City of Philadelphia. The Community Rights Division of the District Attorney's office is responsible for prosecuting police officers charged with having committed crimes against citizens.

Complaints received by the District Attorney's office are sent to the Police Department for investigation. A report is returned to the District Attorney, who then decides whether or not to prosecute.

In many cases where a complaint is made against a police officer, criminal charges arising out of the same incident are pending against the complainant. The District Attorney also has responsibility for prosecuting the complainant. In many cases, the same Assistant District Attorney may be responsible for some aspects of both prosecutions.

Prosecutions of police officers do not occur unless serious physical injury has been sustained by a citizen as a result of police action. Often, complaints against police are dropped in exchange for a dismissal of criminal charges against the complainant.

The District Attorney's office does not ordinarily communicate to the claimants its decision not to prosecute the police officer.

F. *Goode Case*

The plaintiffs in this case are black citizens of Philadelphia who claim that their constitutional rights have been infringed by the conduct of Philadelphia police; they bring their action on behalf of themselves and all other citizens of Philadelphia whose constitutional rights have been or are likely to be thus infringed.

I make the following findings of fact concerning the specific instances alleged:

1. *Roy Lee Shaw.* On March 10, 1969, Roy Lee Shaw, a 16-year old black male, was arrested and charged with assault and battery on a police officer, resisting arrest and disorderly conduct.

On that date, at about 2 p.m., Shaw walked out of a store located at the corner of 11th and Somerset Streets. Officer DeFazio of the Highway Patrol, who was patroling the area in an unmarked car, observed Shaw. He drove around the block, proceeded south on 11th Street (a one-way street for northbound traffic), parked his car adjacent to where Shaw was walking, got out of his car and told Shaw to stop. Shaw turned and asked why he was being stopped, whereupon DeFazio struck him on the head with a blackjack. Shaw then struck DeFazio on the chin, and ran north on 11th Street. DeFazio drew his service revolver and fired a shot in the general direction in which Shaw was running. Shaw then stopped, DeFazio placed one handcuff on him, and pulled him, struggling, back to the police car. DeFazio shoved Shaw into the car and called for additional police help. Shaw was lying face down on the back seat of the police car, still struggling, and DeFazio then struck him with his nightstick. Two other officers arrived on the scene, and additional blows were struck, until they succeeded in placing both handcuffs on Shaw and placing him in a police wagon.

A crowd, mostly blacks, was attracted to the scene by the commotion. As the officers left, DeFazio made various racially derogatory remarks to the crowd.

Shaw was transported to the headquarters of the 25th Police District, where he was again struck by police nightsticks. His mother attempted to visit him, but was not permitted to see him while he was at the district office.

Eventually, Shaw was transported to Episcopal Hospital and received medical treatment. A cut on his head required four stitches. After receiving medical treatment, Shaw was taken back to the 25th Police District and held for approximately two more hours, whereupon he was released in the custody of his mother.

On June 11, 1969, Shaw was initially adjudicated delinquent in Juvenile Court proceedings, but was released without probation. The next day, the disposition of the case was changed to "discharge as to offense."

There was no basis for stopping Shaw in the first place, there was no probable cause to arrest him, and his arrest was illegal. He did not assault DeFazio, nor was he guilty of disorderly conduct; he merely made minimal efforts to defend himself and to protest the violation of his rights.

Neither Shaw nor any member of his family made any complaint to the Police Department or any other City official concerning this matter. Shaw did bring the matter to the attention of Community Legal Services; a staff attorney of that organization wrote to the Community Relations Service of the United States Department of Justice describing the incident, but received no reply.

2. *Gerald G. Goode.* On December 1, 1969, at about 11 o'clock p.m. or midnight, Gerald G. Goode, a 25-year old black graduate student at the University of Pennsylvania, six feet one inch tall and weighing approximately 200 pounds, was a passenger in an automobile driven by Mrs. Ruth Rotko, a white woman, the wife of an Assistant District Attorney of Philadelphia. They were proceeding north on Broad Street. Mr. Goode was sitting in the right rear seat and was the only passenger.

Near the intersection of Broad Street and Erie Avenue, while their car was stopped for a traffic light,

Mr. Goode noticed police officers DeFazio and D'Amico frisking a black man nearby. Mr. Goode rolled down the car window and called to the officers that they had no right to do what they were doing, and that they should leave the man alone. At that time, the officers were approximately 25 feet away from the car, and within hearing range of Mr. Goode's remarks. Mr. Goode did not use profanity or make any personally derogatory remarks.

The traffic light then turned green, and the Rotko car proceeded north for several blocks, until overtaken and stopped by D'Amico and DeFazio, who gave chase in an unmarked police car. Both officers proceeded to the passenger side of the Rotko car, and one of them called to Mrs. Rotko to produce her identification cards. DeFazio ordered Goode to get out of the car. When Goode did not promptly comply, DeFazio opened the unlocked front door of the car, reached through and unlocked the rear door, and opened it. He struck Goode on the knee with a blackjack and yanked him out of the car by his coat. The officers then turned Goode around against the car and patted him down.

Goode demanded to know why he was being subjected to this treatment, but received no reply. The officers attempted to place handcuffs on him, and he swung his arms in an attempt to avoid the handcuffs.

As Goode was being pulled from the car and turned around, he stepped on the foot or bumped the leg of Officer D'Amico.

After being frisked, Goode turned and again asked for an explanation for the police action, whereupon Officer DeFazio struck him across the cheek and mouth with a blackjack, cutting his lip. Angered by this treatment, Goode told the officers to "get your fucking hands off me".

After handcuffing Mr. Goode and placing him in the police car, the officers returned to the Rotko car and

asked Mrs. Rotko for her driver's license and registration card. Officer D'Amico searched the back seat and rear interior portion of the car. Both officers inquired of Mrs. Rotko as to the basis of her acquaintanceship with Mr. Goode. Mrs. Rotko was given a ticket for failing to have her driver's license in her possession, and there was some suggestion that they might arrest her too.

In explanation of their arrest of Mr. Goode, Officer D'Amico stated "you can't use profanity with an officer."

Mr. Goode was taken to a police station and detained in a cell for approximately two hours. He was then taken to Episcopal Hospital, where he received several stitches in his lip and a tetanus shot. He was then reurned to the police station and, at approximately 5 a.m., was taken to the Police Administration Building at 8th and Race Streets, where he was fingerprinted and photographed. At approximately 9 a.m. the next day he was brought before a magistrate on charges of assault and battery on an officer, resisting arrest, and breach of the peace, and was released on nominal bail. On February 11, 1970, all charges against Mr. Goode were dismissed, upon the joint motion of the Commonwealth and Mr. Goode's attorney.

The Police Department conducted an investigation into the conduct of D'Amico and DeFazio in this matter; the investigation was under the supervision of staff inspectors Ditmer and Fragassi.

Statements were taken from the persons directly involved and from five witnesses, and a report summarizing the statements was compiled. The personnel records of the officers were checked. DeFazio's personnel record at that time showed one previous suspension and two appearances before the Police Board of Inquiry. No further check into the backgrounds of the officers was made, nor was DeFazio's prior record referred to in the report.

The statements obtained by the investigating inspectors were essentially in accord with the facts set forth

above. The statements of Officers D'Amico and DeFazio (neither of whom testified in the present case) asserted that Goode had used profanity in his initial comments to them and that he was unruly and boisterous after they stopped his car.

The inspectors expressed the conclusion that Mr. Goode's initial comments to the officers constituted probable cause for his arrest; that only reasonable force was used: that the officers were not unduly rude to Mrs. Rotko; and that, in summary, there was no basis for disciplinary action against either officer.

In finding that there was probable cause for the arrest of Mr. Goode, the inspectors adopted the interesting reasoning that Mr. Goode's initial comments must have created probable cause for his arrest, otherwise the officers would not have pursued the Rotko car so vigorously.

On the basis of the undisputed and admitted facts, it is entirely clear that there was no probable cause for arresting Mr. Goode, and that the conduct of the police was in flagrant violation of the law and the Constitution.

3. *The Ballow Incident.* On June 20, 1970, at approximately 7:45 p.m., Officers Frederick Morse and John D'Amico observed a black male operating a motorcycle which did not have registration plates. The man refused to stop at their request, whereupon they gave chase in their police car. Eventually, the man fell off the motorcycle, and escaped on foot, the officers in pursuit.

The officers concluded that the person sought had entered a house at 2337 N. Howard Street. As the officers arrived at that address, a crowd of approximately 20 people, mostly black, gathered in the street.

Juanita Ballow and one Carlos Edney resided at that address. Plaintiffs' testimony was to the effect that

Officer D'Amico ran into the house, passed Miss Ballow, went up to the second floor, came back downstairs and then told Miss Ballow that he was chasing someone. The defense version was that the two officers stopped at the door of the house, where they were confronted by Miss Ballow and Mr. Edney. For present purposes, this discrepancy need not be resolved.

It appears to be undisputed that, when Miss Ballow and Mr. Edney demanded to know what the police wanted, Officer D'Amico drew his service revolver and threatened to shoot Miss Ballow. Officer Morse summoned assistance, and an additional police officer arrived. D'Amico broke the glass in the front door of the house with his nightstick, and the three officers entered the house. Mr. Edney was standing inside in the hallway, with a wrench in his hand. After a brief discussion with Officer D'Amico as to the officers' purpose, a scuffle ensued. When D'Amico again threatened to use his revolver, Edney escaped out the back door.

The officers searched the upper floors of the house, but did not find the man they were originally looking for. The officers emerged from the front of the house, and Carlos Edney, who had come around from the back of the house, again asked what they were doing, and made a derogatory remark to D'Amico. D'Amico pushed Edney against a parked car and handcuffed him.

As Carlos Edney was being handcuffed, his brother, Frederick Edney, arrived on the scene, ran up to D'Amico and asked him what Carlos was being arrested for. Allegedly because Frederick seemed to be reaching into his pocket as if to draw something from it, the officers physically restrained him and handcuffed him as well. Frederick Edney had no weapon or anything else in his pocket. Both of the Edneys were taken into custody. On July 31, 1970, Frederick Edney was convicted in Municipal Court on a charge of interfering with a police officer.

4. *Herbert Brown Incident.* On December 1, 1969, at about 12:30 a.m., Herbert Brown and Wesley Joiner, two black men, were walking along Atlantic Street near its intersection with Old York Road. There were automobiles parked along Atlantic Street near where they were walking, and they were carrying a flashlight.

Officers DeFazio and D'Amico, who were patrolling the area in an unmarked car, stopped the two men and pushed them up against a wall. Brown and Joiner were discovered to be carrying a pair of pliers and a screwdriver, as well as a flashlight. DeFazio stated to Brown, "Got you now, nigger," and accused him of attempting to steal a car battery. When Brown attempted to explain that his own disabled vehicle was parked about a block away, with two girlfriends in it; and that he was looking for a piece of wire with which to attempt to start his car, DeFazio struck him in the face with his hand.

The two men were handcuffed, placed in the police car, and taken to the police station. Their request for permission to inform their waiting female companions, and to give them carfare so that they could get home, was denied. When Brown complained that his handcuffs were too tight, DeFazio again used racially derogatory terms and did not loosen the handcuffs until they arrived at the police station. Charges of attempted larceny against Brown and Joiner were ultimately dismissed, for lack of a prosecuting witness.

Giving the police the benefit of the doubt, I shall assume for present purposes that the two men were, or reasonably appeared to be, attempting to steal a battery. But this would not, of course, justify the racial slurs, the rough treatment, or the disregard of the plight of their stranded female companions.

5. *Bernard Sisco Incident.* On October 31, 1969, at about 9:30 p.m., police patrolling in the 16th District were

notified by radio that a rape had occurred in the area of 37th and Wallace Streets. Shortly thereafter, approximately six officers arrived at the scene. The complaining witness stated that she had been raped by several males, and that she knew that one of them was blind and lived at 3620 Wallace Street, a short distance away.

Bernard Sisco, a blind 20-year old black male, resided at the address stated. Officers DeFazio, Carroll and Brown proceeded to that address, and, without standing on ceremony, opened the door and entered the house, announcing simultaneously that they were police officers. Bernard Sisco opened the vestibule door from the inside and stood there, with an open knife in his hand. The police officers heard the victim of the rape, who had accompanied them, say something to the effect that Sisco was one of the rapists.

The police ordered Sisco to drop his knife, and he did so, whereupon the police wrestled him to the floor. Lieutenant Taylor and Lieutenant McGaughrin came up on to the porch to help subdue Sisco. After a struggle, the officers succeeded in handcuffing Sisco, and pulled him out of his house and into the street. While they were awaiting the arrival of a patrol wagon, Sisco spit on Officer Carroll, whereupon Officer Carroll lost control of his temper, grabbed him by the collar, pushed him to the ground, and began beating him. A superior officer ordered Carroll to go back to his police car, and he did so.

When the officers were placing Sisco in the patrol wagon, he stumbled, whereupon Officer DeFazio pushed him violently into the wagon.

Sisco was taken to the West Detective Division Headquarters at 44th and Parkside, where he remained for approximately four hours. He had been at the Detective Division Headquarters for about two hours before his mother was permitted to see him for the first time. She

brought him a clean set of clothing, and observed that he was bleeding from his nose and mouth.

Thereafter, Sisco was taken to the Police Administration Building for processing. Photographs, taken some time between 2:25 a.m. and 4:45 a.m., on November 1, 1969, reveal no visible signs of physical injury to his head, nor do they conclusively rule out the presence of injury. The medical records of the Philadelphia Detention Center, where Sisco was held without bail pending preliminary hearing, do not reveal that he received any treatment. He was kept in the prison hospital solely because of his blindness, and not for any other reason.

At a preliminary hearing on November 7, 1969, the rape charges were dismissed when the victim was unable to identify Sisco positively as one of her assailants. He was, however, held for court on charges of resisting arrest, assault and battery on an officer, and carrying a concealed deadly weapon.

After the preliminary hearing, a physician to whom Sisco was referred by his rehabilitation counsellor, examined him on November 11, 1969. The doctor found swelling on the top of the head, and concluded that Sisco had suffered a cerebral concussion.

The evidence upon which the foregoing findings are based is sharply conflicting. According to Sisco, his sister, and his mother, Sisco never offered any resistance to the police, but was nevertheless severely and monstrously abused, both at the scene of the arrest, and while in police custody thereafter. If their testimony were accepted at face value, the police acted with utter barbarity. If the testimony of the police and the victim of the alleged rape were accepted as literally correct, Sisco was never struck at all by any of the police. Under this version, any physical mistreatment of Sisco was self-inflicted, by reason of his rolling around on the ground and otherwise struggling against the handcuffs.

Given the fact that the police believed they were in "hot pursuit," and the admitted circumstances of their entry into the Sisco house and their initial observation of Sisco; and given the admitted fact that at least one officer became so angry that he had to be restrained by his superior officer, I have no doubt that Sisco was struck, and that the officers did not limit their use of force to the precise amount required to "subdue" a prisoner who was, after all, both blind and handcuffed, and who had earlier relinquished his weapon when ordered to do so.

While I have concluded that the testimony of the complaining witnesses is undoubtedly exaggerated, I do not believe it is totally fictional. The exaggerations and embroidery sprang from a sincere and deeply held conviction that the conduct of the officers was totally unjustified.

The evidence was sharply in conflict as to whether the victim of the crime identified Sisco as one of her assailants, before his arrest. I have accepted the defense testimony that she did. It must be conceded, however, that the extent of her opportunity to make such an identification before the initial scuffle is not altogether clear; and 10 days later she was unable to identify him at the preliminary hearing.

6. *Joseph Reas Incident.* On the evening of May 2, 1969, Joseph Reas, a 16-year old white male, was attending a carnival at Father Judge High School. At approximately 10 p.m., he and three other boys entered the school playground near the carnival area, and saw a girl who was weeping and who had blood on her face. Police arrived at the scene and some of the boys started to run away. Reas did not run. However, he was struck twice on the head with a blackjack, fell to the ground, and was struck again on the back of the head. His head was cut open, and he lost consciousness as he was being placed in a police wagon.

Officer DeFazio was one of several officers who arrested Reas and other teenagers on that occasion.

Reas was taken to Nazareth Hospital, where he regained consciousness and received several stitches to close his head wound. He remained in the hospital for two days. He was initially charged with inciting to riot, but the charges were dropped while he was still in the hospital.

The boy's mother could obtain no information from the hospital as to what had occurred. The next day she went to the 7th Police District Headquarters but no one there could give her any information as to the identity of the police officers involved, except that they were members of the Highway Patrol.

In some undisclosed fashion, Mrs. Reas was caused to believe that Officer DeFazio was probably the one who had struck her son. She spoke to Captain Murphy, Commanding Officer of the Highway Patrol, several times by telephone. She was discouraged from attempting to speak directly to Officer DeFazio, but was advised that she had the right to press charges against him.

Mrs. Reas did not press charges against Officer DeFazio. Several months after the incident, DeFazio visited Mrs. Reas at her place of employment and, among other things, told her: "Highway patrolmen are known to be rough and tough, and I am a highway patrolman, and I am proud of it."

7. *Disciplinary Action.* In none of the foregoing incidents was any disciplinary action taken against Officer DeFazio, D'Amico, or, so far as the record discloses, any of the other police officers involved. In the following two instances, disciplinary action was taken against DeFazio:

(a) *Louise J. Reed.* On October 3, 1967, Louise J. Reed, a black woman and the wife of a Common Pleas judge, and Coleman Clark, a white man, were employed as teachers at the George Washington Carver Elementary School, which is located in a predominately black area.

Officer DeFazio was patrolling the area in a police car. At about 4 p.m., Mr. Clark, who had just left a faculty meeting at the school, was driving his car nearby. Officer DeFazio stopped him in front of the school; Mr. Clark did not know why he was being stopped, and DeFazio did not tell him. A heated discussion followed.

At about that time, other faculty members were emerging from the school. Among other things, DeFazio told Clark to shut up, and accused him of acting like "the black pigs that live around here." Mrs. Reed remonstrated with DeFazio because of this remark, but was told to shut up. Mr. Clark rejoined the argument, and others became involved. At one point, DeFazio placed Clark under arrest, but the school principal intervened and restored calm.

The next day, 57 members of the faculty of the school complained in writing to DeFazio's commanding officer, with copies to the Mayor and Police Commissioner. Ultimately, on November 8, 1967, DeFazio was tried by the Police Board of Inquiry on charges of using rude and insulting language, and conduct offensive to the public. Mr. Clark and DeFazio exchanged apologies. The Board found DeFazio guilty and recommended a two-day suspension, with which the Police Commissioner concurred. Mr. Clark was informed of the Board's decision.

(b) *Anti-Semitic Remarks.* On the same date as the hearing referred to in the preceding paragraph, DeFazio was also tried by the Police Board of In-

quiry on charges of insubordination, neglect of duty and disobedience of orders. He was found guilty of having referred to a member of the public as a "Jew bastard" in the presence of a Jewish police officer; appearing at a court hearing in improper uniform, and refusing to submit a memorandum to a superior officer. The Board of Inquiry recommended a 10-day suspension; Police Commissioner Rizzo reduced this to three days' suspension.

As a result of the two incidents discussed above, DeFazio received a total suspension of five days. However, this was "served" by deducting five days from his accrued vacation time, and thus did not result in any actual pecuniary loss.

8. *Miscellaneous.* There was a great deal of evidence concerning Officer DeFazio's off-duty conduct in his home neighborhood. This evidence, which is substantially uncontradicted, raises further serious questions about DeFazio's fitness for police work. However, since DeFazio is no longer on the force, no useful purpose would be served by detailing the circumstances here.

It is clear that numerous oral complaints were received by DeFazio's superiors, relating to his conduct both on and off duty, and that no written record of these complaints was made, and no action taken. These complaints had no appreciable effect upon DeFazio's official fitness ratings.

G. *COPPAR CASE*

The Coalition of Organizations on Philadelphia Police Accountability and Responsibility (COPPAR) is an organization of some 32 constituent organizations with a common concern about police conduct and police-citizen relations. The Co-Chairmen of the organization are Mrs. Mary

Rouse and Mr. Floyd Platton. The principal function of the organization is to receive citizen complaints of police misconduct through its constituent organizations, and, with the help of attorneys retained through the reorganizations, to bring the complaint to the attention of the Police Commissioner or other authorities in a position to remedy the conduct in question. Mrs. Rouse maintains an office at 124 W. Cumberland Street, Philadelphia, Pennsylvania.

COPPAR, and the individual plaintiffs (all of whom claim to have been the victims of unconstitutional police conduct), purport to bring this action on behalf of themselves and all others in Philadelphia who are, or are likely to be, similarly mistreated. Additional plaintiffs include the Black Panther Party, a militant black organization; and the Young Lords Party, a militant organization of persons with Latin American ancestry.

The specific instances of alleged police misconduct are set forth in chronological order, in the following findings:

1. *Charles Blackman.* This incident evolved from an altercation between Charles Blackman, a black male who resides at 1412 S. Fallon Street, and Officer Crawford McGerald, a black police officer who was off duty at the time.

Mr. Blackman's house is apparently quite close to the street. In parking his car in front of the Blackman residence, McGerald apparently permitted the vehicle to come in contact with the house; at least, Mr. Blackman was convinced that he had done so. Blackman called the police to report the incident, but the investigating officer, finding that Mr. Gerald's car was then parked legally, and observing no damage, left the area.

Shortly thereafter, Blackman encountered McGerald and cursed at him because of the incident. McGerald

pushed Blackman down in the street. Blackman struck McGerald a glancing blow on the side of his body with an ice pick which Blackman was carrying. Thereupon McGerald pursued Blackman onto the porch of his house, drew his revolver and struck Blackman on the side of the face with it.

A patrol wagon, and the investigating officer referred to above, arrived at the scene. They accepted McGerald's version of the incident, took Blackman to a hospital and, after he refused treatment, to the West Detective Division, where he was placed under arrest and charged with aggravated assault and battery on a police officer.

This incident is of no significance in the present case. At most, it arguably demonstrates that, in a case of a personal altercation between a civilian and an off-duty policeman, the police are likely to side with their colleague.

2. *Robert Nicholas.* Two Community Legal Services lawyers, engaged by a local community organization to represent two young men who had been arrested, were initially refused permission to see or talk to their clients. A high-ranking police officer, Inspector Shields, was called to the station. He reiterated the view that it was the policy of the Police Department not to permit attorneys to talk to defendants unless they knew the names of their clients and had been retained by the clients' families, as distinguished from community organizations. The police made no attempt to verify the parents' wishes in the matter, although one or more of them was present in the vicinity. The police appeared to be suspicious of the attorneys and antagonistic to the community organization which had engaged their services.

The defendants contend that the alleged police policy explained by Inspector Shields has since been discarded. I accept that representation.

3. *Raymond Ragland.* On May 18, 1970, at about 11 p.m., Raymond Ragland, a black male pharmacologist, was walking slowly on the sidewalk along Gowen Avenue near his home. This is a racially mixed area. Ragland was neatly dressed. An unmarked police car, which had been proceeding in the opposite direction, turned around a short distance up the street and came back towards Mr. Ragland. He looked at the car after it had completed this maneuver.

Officers Rowe and Taylor, who were in the police car, stopped and asked Ragland if he was all right. They received no audible response. They then got out of the police car and asked for identification. Ragland told them that he had none, although he did have a wallet on his person. Ragland complained to the police about being stopped and asked for identification.

Thereafter, over the space of about 10 minutes, a spirited discussion ensued, during which the officers continued to demand identification, and asked Ragland to take his right hand out of his pocket. Ragland continued to question their reason for stopping him, and told them that if he was wanted for anything they should take him to a police station, otherwise they should let him go.

Finally, Officer Taylor reached for Ragland's right hand, and Ragland quickly pulled his hand out of his pocket. The officers then told Ragland he was under arrest, but did not say what for.

Ragland was then frisked. The officers pulled his arms behind his back for the purpose of handcuffing him. Ragland pulled his left arm away. One officer thereupon told him that he would "twist your black arm off." Officer Taylor struck Ragland on the arms, spine and knuckles with his nightstick, and also jabbed him in the stomach with the stick. Ragland was handcuffed, and taken in a patrol wagon to the 14th District Station, where he pro-

duced his identification. He was told that he was being held "for investigation."

Thereafter, Ragland was taken to Northwest Detective Headquarters, about three miles away. He was asked his name, address and occupation, and asked what organizations he belonged to. He was also requested to make a statement. Ragland identified himself, but refused to make any further statement. He was then told by a detective that he was being charged with assualt and battery on an officer, resisting arrest, and for disturbing the peace. About an hour later, Ragland was transported to the Police Administration Building. He was given a preliminary hearing, and was released on his own recognizance at about 5 a.m. Several weeks later the charges were dismissed at a further hearing.

Ragland wrote a letter of complaint to the Police Commissioner. The latter responded, advising that the complaint was being referred to the Highway Patrol. Several weeks later, a representative of the Highway Patrol informed some of Ragland's fellow employees that nothing would be done with respect to the complaint. Ragland also gave a statement to the FBI concerning the incident, but never heard further from that agency.

Several months later, a staff inspector of the Police Department requested Ragland to provide a written statement of the incident, and Ragland complied. Three months later having heard nothing further about the matter, Ragland's attorney telephoned Inspector Kopsitz, and was then advised that no action would be taken. Except for this conversation, Ragland has never received any information from the Police Department concerning the disposition of his complaint.

4. *Howard Schwartz.* On May 23, 1970, shortly after midnight, a black male teenager snatched a set of car keys from a woman who had just parked her car near Rodney

Street and Mt. Airy Avenue. The boy and three companions then fled the scene. Two police officers observed this incident and gave chase, but the boys escaped. Thereupon, the two officers, together with other officers who had been called to the scene, proceeded through the area and picked up approximately eight teenage boys and brought them back to the scene for possible identification by the victim. She did not identify any of the boys, and only one of the boys was believed by the police to resemble the youth they had earlier seen fleeing.

When one of the boys resisted the officers' efforts to have him confront the victim, Officer Duross pulled him from the police car and struck him in the face with his fist. All of the eight boys were taken away from the scene in police cars. Notwithstanding the victim's inability to identify her assailants, the two boys who had been apprehended by Officer Duross were taken to 14th District Headquarters. They were held until 8:30 a.m., when they were interviewed by a juvenile aid officer. They were charged with robbery, and subsequently released in the custody of their parents.

One Howard Schwartz, a disinterested witness who resided nearby, observed the police conducting the on-the-spot confrontations. He was disturbed by what he regarded as improper police conduct, and reported the incident to Mrs. Rouse of COPPAR. However, he made no complaint to police officials, because he felt it would be pointless.

5. *Kenneth Lassiter.* On June 6, 1970, at about 7 a.m., Kenneth Lassiter, a 16-year old black male, at the request of his mother, was loading some packages into a car in front of his home at 6th and Green Streets. He was dressed in a T-shirt, dungarees, and sneakers with no socks.

Detective McCaron was patrolling the area in an unmarked police car. Among other things, he was investigating a rape which had taken place at a nearby school the previous week. He had been furnished a description and a composite sketch of the alleged rapist. He concluded that Kenneth Lassiter resembled the suspect.

The officer approached Lassiter and ascertained his name, age and address, and told Lassiter that he was being taken into police custody for investigation in connection with some streetcar robberies.

Lassiter did not object to accompanying the officer. The officer made no attempt to inform the boy's family of the situation, until Lassiter's mother, who had observed the incident from inside the house, came out to protest.

The officer told her that Kenneth was being taken to the Central Detective Division, and he was in fact transported there in a patrol wagon.

Although the police apparently did not consider that Kenneth was under arrest, the fact is that he was photographed, shown the composite sketch of the rapist and told the reason for the investigation, warned of his right to remain silent and to have a lawyer, and questioned about his school and social activities. At some point, he was requested to take a lie detector test, and agreed to submit to this examination.

It is the policy of the Police Department, concurred in by the District Attorney's office, that any person 16 years of age or older may be submitted to a lie detector test, without notification to or consent of his parents, if he consents.

Kenneth was taken to the Police Administration Building, and a polygraph test was administered. As a result, the police concluded that Kenneth was innocent. One of the initial questions asked of Kenneth during the test was, "During the first 13 years of your life, do you remember jerking off?"

Kenneth was released at about noon on the day of his arrest. He had not been provided with any food during his time in custody, and he was not provided with transportation home.

Immediately after Kenneth was taken from his home by the police, his mother telephoned a relative who worked for the Human Relations Commission. The latter arrived at Central Detective Division while Kenneth was still there, but was not permitted to see him. She asked why he was being held, and was told that he was not under arrest, but was just "under investigation." She asked that, in that case, he be released immediately; and she was assured that Kenneth would be released in a few minutes. Instead, Kenneth was removed to the Police Administration Building for the polygraph test, but the relative was not informed of this until about 15 minutes later. She protested that he was too young for such a test, but her protests were ignored.

A written complaint in connection with the incident was made to the Police Commissioner. Staff inspectors interviewed Lieutenant McCaron, but no action was taken.

5. *Helen Peurifoy.* On June 10, 1970, the police were required to deal with what was apparently a potentially tense racial situation in Southwest Philadelphia (whether the tension was racial in origin, or stemmed from teenage gang disputes, is not altogether clear). Officers patrolling the area encountered a large group of persons, mostly blacks, in the vicinity of 57th Street and Chester Avenue. Some children in the group were holding bottles. The officers proceeded to arrest some of these persons.

Mrs. Helen Peurifoy, a black woman, had been visiting friends nearby and came out to see what was happening. She questioned the police as to why the particular people were being arrested, and urged the police to arrest

some other persons who had escaped. She was immediately placed under arrest for "inciting to riot." She protested her arrest, and attempted to resist police efforts to handcuff her, by swinging her arms.

One Sergeant Simmons, Patrolman DiSalvatore, and two other police officers, subdued Mrs. Peurifoy and succeeded in placing handcuffs upon her. She was pulled across the street and pushed into a patrol wagon, and transported to the district police station.

Upon arrival at the police station, Mrs. Peurifoy did not willingly leave the patrol wagon, so she was yanked out of the vehicle by Officer DiSalvatore, who also threatened her with his nightstick and called her a "black bitch."

Inside the station, Mrs. Peurifoy requested a glass of water and some medication which she needed, but this request was ignored. She was not permitted to make a telephone call. After approximately 45 minutes, she was again handcuffed and taken in a patrol wagon to West Detective Division Headquarters.

During both of her trips in the patrol wagon, Mrs. Peurifoy was jostled extensively by the motion of the vehicle; she is convinced to this day that the vehicles were intentionally operated in an erratic manner, swerving from side to side, stopping and starting suddenly, in order to increase her discomfort.

At West Detective Division Headquarters, Mrs. Peurifoy was kept in a cell for about an hour, and again was denied water and medication. She was questioned by a detective as to what had happened, and was not warned of her rights until after she has responded to his questions. She complained to him of her illness and need for medication, and also about the treatment which had been accorded her by the police. The detective then left the interview room, and returned in about 15 minutes, informed Mrs. Peurifoy that she was being discharged,

and offered her a glass of water and the requested medication. She was then visited by a staff inspector who offered to drop all charges against her if she would promise not to file a complaint against the police officers. She was returned to the district police station, where the officer in charge told her that he would write a note to the officer who had mistreated her. About three hours after her original arrest, Mrs. Peurifoy was released, and no charges were ever filed against her.

6. *Mary Blackwell.* On July 23, 1970, at about 10 p.m., police were summoned to the scene of a disturbance in the area of 24th and Moore Streets, where bottles and stones were being thrown. There had been large-scale racial disturbances in that area in the past.

Among the other events of that evening, two police officers arriving at the 1700 block of 24th Street observed two teenage boys, one white and one black, confronting each other in the street, each with a belt wrapped around his hand. A crowd had gathered, and the officers had difficulty reaching the boys. One of the officers, Sergeant Mangini, took the belt away from the white boy, and approached the black youth, one Vincent Blackwell, 17 years of age. As Blackwell backed away from the officer, Sergeant Mangini struck him on the arm with his nightstick. Blackwell's 20-year old sister attempted to intervene, and was jabbed in the abdomen with the nightstick.

Blackwell's mother, who had come down from her porch to try to get her boy back into the house, was nearby when this occurred. When the sergeant swung at her son, she grasped the officer's shirt and tried to push him away. The officer struck her in the abdomen and pushed her away from him.

Other people gathered around, and the sergeant cleared the area by swinging his nightstick. All three Blackwells were placed under arrest and taken to a patrol wagon. No one else was arrested on that occasion.

Mrs. Blackwell was dressed in a slip and blouse, and her daughter, who had been preparing for bed, was wearing blue jeans and a pajama top. All three Blackwells were taken to South Detective Division Headquarters. The police did not inform Mrs. Blackwell of the nature of the charges against her or her children. She was told that she did not have to make any statement, however she did make a voluntary statement, and so did the children.

While the Blackwells were being held in custody, the police were proceeding to investigate the incident, by taking statements from residents in the area. All of the witnesses agreed that Sergeant Mangini had not been attacked, and Sergeant Mangini had advised the detectives that he had struck the Blackwells. All of these interviews were completed by 1:30 a.m.

After 1:30 a.m., the Blackwells were given food for the first time, and Mr. Blackwell, the husband and father, was permitted to visit them and give them clothing.

At about 3 o'clock a.m., the three Blackwells were transported to the Police Administration Building, where they were fingerprinted and photographed. At about 4:30 p.m. on July 24, they were arraigned, and were told for the first time that they were charged with assault and battery on a police officer, disorderly conduct, resisting arrest, and inciting to riot.

On July 31, 1970, the Blackwells appeared at a preliminary hearing. The presiding magistrate dismissed all charges, but emphatically told Mrs. Blackwell that if any charges arising out of the arrests were brought against police officers, she would be rearrested and prosecuted.

7. *Jean Thomas.* On August 11, 1970, at about 6:45 p.m., Officer Tullio Ioannucci was shutting off an open fire hydrant at 39th and Mt. Vernon Streets. Mrs.

Jean Thomas, a black woman, suggested to him that it would do no good to close the hydrant, because people would simply open it again. The officer told her, in effect, not to bother him. The conversation became heated. The officer called Mrs. Thomas a nigger bitch, and she called him a pig. Residents in the area began to gather about.

The officer advised Mrs. Thomas that he was going to arrest her for disorderly conduct, and proceeded to his nearby police car to call for a patrol wagon. Mrs. Thomas went into her house.

Additional police officers and park guards arrived, in response to Officer Ioannucci's call. He then attempted to enter Mrs. Thomas' house, but the doorway was blocked by her 17-year old daughter Cheryl. Two other children, James Thomas, 14, and Brenda Thomas, 18, also were at the door and told the police to stay away. Cheryl Thomas refused to move out of the officer's way, and was arrested and placed in the patrol wagon. The other two children tried to prevent this, and were also arrested and placed in the patrol wagon. Two officers then entered the house and conducted a thorough search, from basement to attic, but did not find Mrs. Thomas. They then left and took the three children to 16th District Headquarters. They were interviewed by a juvenile aid officer, but refused to give information. Brenda was sent to West Detective Division headquarters to be treated as an adult offender; James and Cheryl were charged with disorderly conduct, resisting arrest, and assault and battery, and taken to the Youth Study center and held overnight. The next morning they were released, and all charges were dropped.

A few days later, Brenda Thomas was released, having been found guilty of one of the offenses charged against her. Mrs. Thomas was never arrested or charged with any offense arising out of this incident.

8. *Dennis Holland.* On August 14, 1970, at about 2 p.m., a police officer observed Dennis Holland, a 25-year old black male, lying unconscious in a parking lot at 13th and Commerce Streets. He called for an emergency wagon, which transported Holland to Jefferson Hospital.

In the emergency room, Holland regained consciousness, but did not respond sensibly to questions asked of him, and proceeded to behave in a very erratic manner. He was thereupon placed under arrest and charged with disorderly conduct. Although police obtained his identification from his wallet, no member of his family was notified. He was promptly sentenced to 30 days in jail, in default of a $30 fine, and was taken to the House of Corrections. He continued to behave erratically, and was taken to the prison hospital.

Throughout this entire series of events, Holland, who was a diabetic, had been suffering from a diabetic reaction, and was clearly not responsible for his actions. It was not until the following day that his true condition became known, after which his relatives were contacted, and he was released from prison that night.

No charge of actual police misconduct could properly be based upon this incident. The police, the hospital staff, and the committing magistrate exhibited merely a regretable lack of concern, and a willingness to jump to conclusions.

9. *Fernando White.* On August 15, 1970, at about 11:30 p.m., two highway patrolmen got out of their police car in Germantown in order to investigate a person they believed to resemble a rape suspect. A group of persons were standing nearby. Upon completion of their investigation, the officers got back into their vehicle. A black youth, Fernando White, age 16 or 17, approached the vehicle on the passenger side, asked the officer for his

name and badge number, and then spit upon him. The officers then emerged from the police car, subdued and handcuffed White, after a brief struggle.

White was taken to 14th District Headquarters, and a group of citizens followed him to that office in order to protest his arrest. A police lieutenant spoke to this group, interviewed White, and decided to release him because he had no prior record, the incident was not serious, and White apologized to the officer. No charges were filed, and White was released at about 12:30 a.m.

10. *Adalberto Molinas* (This incident did not involve anything approaching misconduct by the police, nor does it shed any light upon the issues in this litigation.)

11. *Raid on Black Panther Headquarters.* On Saturday, August 29, 1970, two police officers were shot, one of them fatally, while on duty at a police station. On August 30, 1970, two more policemen were shot and wounded when they stopped a stolen car.

The Police Department apparently suspected that members of the Black Panther Party may have been involved in these shootings. A convention, the Citizens Constitutional Convention, was scheduled to be held in Philadelphia on September 4, 1970; members of the Black Panther Party were expected to attend that meeting.

The police planned massive raids on premises believed to be occupied by the Black Panther organization; the raids were carried out at about 6 a.m. on August 31, 1970. Raids on premises at 3625 Wallace Street, 2935 Columbia Avenue, and 428 Queen Lane, were conducted simultaneously.

The raid on 3625 Wallace Street was conducted pursuant to a search warrant. Members of the press were alerted in advance, and press photographers were present at the scene.

Interpreting the evidence in the light most favorable to the police, it appears that approximately 20 police officers arrived at 3625 Wallace Street; that an inspector knocked on the door and announced that he had a warrant to serve; and that thereafter some gun shots were fired from inside the building. The police fired about five rounds into the building, then fired tear gas projectiles into the building. The occupants emerged, with their hands on their heads. Police spotlights illuminated the area. All of the occupants were lined up at gunpoint against a wall, and all except the one female present were required to disrobe completely. They were photographed in that condition, and the photographs received widespread newspaper publicity.

The searches of the other premises were very vigorous and thorough. It does not appear whether there were search warrants for the other properties (apparently, there was no search warrant for the Queen Lane property). The three buildings were totally ransacked by the police.

As a result of three raids, approximately 16 persons were arrested and charged with assault with intent to kill, violations of the Uniform Firearms Act, and conspiracy. All were held without bail until 8 p.m., at which time bail was set in the amount of $100,000 each, by a Common Pleas judge who, at the intervention of Police Commissioner Rizzo (now Mayor Rizzo) went to the Police Administration Building for that purpose, superseding the regularly assigned magistrate. At the bail hearing, the judge refused to consider or apply the prescribed standards for fixing bail. On September 3, 1970, in the course of a hearing in this Court on plaintiffs' request for a preliminary injunction directed, *inter alia,* to the bail issue, the bail in each case was, with the consent of the District Attorney's office, reduced to $2,500.

In conjunction with these raids, Mr. Rizzo made various inflammatory outbursts, arguably racial in overtone, in the presence of newspaper reporters; these remarks were widely published in the local press.

12. *23rd and South Streets Incident.* On August 30, 1970, at 5:45 p.m., a bus containing approximately 45 teenage males and 12 adults, all of whom were black, stopped near 27th and South Streets to pick up several black youths who were being pursued by a large group of white youths. Several passengers got off the bus, and fights erupted between whites and blacks; some of the participants were armed with sticks and bottles. A crowd, about evenly divided between whites and blacks, congregated in the area.

There had been several racial confrontations in that area over a period of several weeks. Three police officers appeared on the scene and immediately attempted to disperse the crowd and to separate the blacks from the whites. The bus departed, with some of its occupants still on board; the remaining youths ran in all directions.

A large group, containing approximately 50 persons, most of whom were black, proceeded east on South Street. One of the police officers was injured when he tripped over an exposed water pipe. Other police learned of this injury, and apparently were under the impression that the police officer had been assaulted (it is agreed that he was not).

At 23rd and South Streets, two police officers halted the group mentioned above, and stood them against a wall. Several patrol wagons and a bus load of policemen arrived at the scene, and some of the officers drew their guns. The persons halted were frisked, handcuffed and placed in patrol wagons. A few youths who failed to halt were apprehended and brought back to the scene.

Altogether, 29 persons were taken into custody. Two who had suffered injuries were taken to a hospital; the remaining 27 (10 junveniles and 17 adults) were taken to the 17th District Headquarters. One youth was returned to the scene in an attempt to identify white persons involved in the incident, but no such identification occurred.

After about an hour at the 17th District Headquarters, the arrestees were taken to the Police Administration Building, where all were photographed and fingerprinted, and held in a cell room.

Detectives proceeded to interview the arrestees, in groups of five. The first five interviews were completed at about 8 p.m., by which time the police had learned from other sources that the injured officer had not been assaulted, but had sustained his injury by tripping and falling. At about 8 p.m., a representative of the Human Relations Commission telephoned the Police Administration Building to inquire about the situation.

Nevertheless, the interviews continued. A record check was run on each of the arrestees, and statements were taken from each.

By 9 p.m., the police had determined that no charges would be brought against any of the persons arrested. But the interviews continued. Ultimately, at about 11:30 p.m., the arrestees were taken back to the 17th District, where a representative of the Human Relations Commission had arranged to have them picked up by relatives.

The police did not consider that any of these individuals was arrested on this occasion. The only information given to the arrestees was that they were being held in custody to get them off the street.

No whites were arrested or detained in connection with this incident. The procedures actually followed by the police were totally inconsistent with the explanation

ultimately offered, namely, that the police were attempting to protect the blacks arrested.

While the evidence does not justify the conclusion that the police were unwilling to prosecute the whites involved in these skirmishes, (some attempt was made to identify possible white culprits), the fact remains that blacks were taken into custody "for investigation", whereas the whites were not.

13. *Wilfredo Rojas.* On August 31, 1970, at about 11:30 a.m., police Officers Oliver and Brooks received word that two men had been stripping automobiles, and had been seen running west on American Street; and that one of the men was wearing a blue shirt. The officers observed Wilfredo Rojas, an 18-year old Puerto Rican male, and a companion, walking along Dauphin Street near American. The two youths stopped to converse with two individuals seated in a parked Volkswagen automobile.

Because Rojas and his friend had blue shirts on, the officers stopped to question them. Thereafter, one of the officers concluded that a female seated in the Volkswagen bore some physical resemblance to a person whose photograph he had seen on an FBI wanted poster.

The officers radioed for instructions, and a supervisor appeared on the scene. He told them that the alleged car strippers had already been arrested, and that Rojas and his friend were not involved in that offense. Nevertheless, all four persons were taken into custody and transported to East Detective Headquarters. Police records were checked, and the police satisfied themselves that the girl was not the person wanted by the FBI.

One of the males was wearing the insignia of the Young Lords Party. The police questioned all of the males about their involvement with that organization, and about a homicide with which the police suspected that the

Young Lords Party had some connection. No charges were filed against any of these persons; all were released that day.

14. *Stop and Frisk Incidents of September 1, 1970.* On September 1, 1970, at about 9:30 p.m., a group of 16 police officers stopped a group of approximately 30 black teenage boys in the area of 48th Street and Fairmount Avenue. Some of the officers drew their guns, and the boys were ordered to line up against a wall, where they were searched. Finding no weapons, the police released the boys. At no time did the police give any indication as to the reason for their actions.

After proceeding approximately one-half block farther along the street, the same boys were stopped again by a different group of policemen, and the same search procedure was repeated. This time, the boys were ordered to leave the scene in different directions.

On the same evening, two police officers stopped another group of 10 or 15 black boys walking along Wyalusing Avenue near Lancaster Avenue. The boys were searched, and were allowed to leave the area in groups of four or five.

The area in which these incidents occurred is known to the police as one in which juvenile gang activity flourishes. However, the boys who were stopped were not in fact involved in gang activities at the time.

15. *Ronald Crampton.* On September 3, 1970, two police officers at the scene of a fire saw a car go through a red light, at what they considered to be a high speed. They gave chase in their police car. The operator of the pursued vehicle, Ronald Crampton, was not aware of the police presence, and did not immediately respond. Ultimately, he became aware of the police officers and stopped

his car. The police shined a spotlight on him, drew their weapons and ordered him out of the car. After frisking him, and being satisfied that he was unarmed, they gave him a ticket for going through the traffic light and for a defective muffler.

Mr. Crampton is convinced that he was not guilty of any infraction. He demanded a hearing in Traffic Court, but was fined even though neither officer appeared at the hearing.

16. *Johnson and Simon.* On September 8, 1970, at about 10 p.m., two black high school students, John Stanley Johnson and Herbert Simon, were walking along Chew Avenue in Germantown, immediately in front of Johnson's residence. Johnson was swinging a closed umbrella.

Officers Winchester and Kochik drove past the boys in an unmarked police car, and heard Johnson make some comment which they could not decipher. The police turned around and returned to the scene. They demanded to know what Johnson had said, frisked both boys and asked for identification. The boys denied making any comment, and told the police that Johnson lived at the house in front of which they were standing. The boys did not give the police their names, but Johnson handed the police his wallet, which contained his identification.

The boys were placed in the police car and transported to 14th District Headquarters. However, before they left the scene, Johnson's grandmother came out of the house and inquired as to where they were being taken. The police gave her no reply.

While the boys were at the district headquarters, Simon complained that the police were being too rough with another individual whom they had apprehended. A black police officer pushed Simon away, and, when Johnson attempted to see what was happening, he pushed Johnson

away and struck him on the chin with his fist, stating that he did not like the boys' attitudes.

The boys were then locked in a cell. Johnson's mother arrived at the station, but was not permitted to talk to him. After about an hour, the boys, handcuffed together, were taken in a patrol wagon to another police station at 22nd Street and Hunting Park Avenue. The police did not inform Johnson's mother of his whereabouts until about an hour after the boys had left.

At the 22nd Street and Hunting Park Station, the boys were interrogated as to their previous police contacts, and their organizational affiliation. At about 1:30 a.m., Johnson's mother was permitted to see them for the first time. After warning the boys of their constitutional rights, the police formally charged Johnson with disorderly conduct and interfering with a police officer. No charges were lodged against Simon.

Mrs. Johson was permitted to talk to the officer who had struck her son; the officer maintained that he had acted properly.

Both boys were released in the custody of Mrs. Johnson at about 4 a.m. on September 9, 1970. Later in the day, Johnson and his mother were interviewed by a juvenile court officer. Because they disputed the charge that Johnson had struck the policeman, the case was referred to juvenile court.

17. *Alaberti and Whelan Incident.* On the evening of September 17, 1970, a white male was severely beaten by several black males, in the vicinity of 22nd and Pierce Streets, a racially tense area. Several police cars arrived at the scene, and the victim was taken to a hospital.

Many residents of the area, all of whom were white, were congregating in the street, aroused by the incident. The police told them to disperse, but some of the residents

refused to leave the scene and were vocal in their criticisms of the police handling the matter.

One of the residents, Mrs. Alaberti, was pushed against a police car and struck with a nightstick. A 17-year old white youth, James Whelan, protested the treatment she was receiving. Several other persons loudly criticized the police. All were arrested, and held in custody at the 17th District Station for about an hour and a half. All were then released without charges.

None of the persons arrested made any complaints about the conduct of the police, because they were told by a ward committeeman who was present that any such complaints might result in criminal charges being placed against them.

18. *Fred Brooks Incident.* Two police officers stopped a 22-year old black male who was walking near his home at about 2 o'clock a.m. He could not produce any verification of his identity, but one of the officers recognized him as a resident of the neighborhood. They made a note of his name and age, and, apparently, detained him briefly while they checked some nearby parked cars for possible signs of criminal activity.

Under the circumstances, I am satisfied that the police acted reasonably in all respects on this occasion.

19. *Locke and Perry.* On September 20, 1970, at about 8:30 a.m., Officer Dennis Kirby was visually inspecting the interior of an automobile parked in the 2500 block of Mascher Street (his explanation is that he believed the car might be stolen). However, (a) he had no information to that effect and made no attempt to learn whether it had been reported stolen; and (b) the age and physical condition of the vehicle would seem to have made it an unlikely candidate for theft.

As the officer was withdrawing from the automobile, he was struck by some water thrown from a third floor window of the adjacent house. The officer testified that he saw Oliver Locke throw the water. Oliver Locke, who resided at the house, denies having thrown the water. For present purposes, I shall assume that Locke did in fact throw water on the police officer.

A heated verbal exchange followed, in the course of which Locke told the officer to stay away from the car (which was Locke's car) unless he had a warrant.

Officer Kirby radioed for assistance, and Lieutenant Smith and several other patrolmen and a patrol wagon arrived a few minutes later. Locke remained at the open third-floor window of his house, and made several derogatory remarks to the police, including calling them "pigs." The police told him to come down to the door, that he was under arrest, and that if he did not come to the door they would come in and get him. Locke again stated "fuck you, pigs." What followed can only be described as a rather complete loss of control on the part of the police.

The police broke open the door to the house, and three of them ran up the stairs. Locke's wife; five months pregnant and dressed only in a nightgown, was standing on the second-floor landing. Lieutenant Smith pushed her out of the way and ran up to the third floor, where he seized Oliver Locke and pulled him down the stairs. Officer Kirby struck Locke on the head with a blackjack, causing an open wound.

As Locke was being dragged down the stairs, Lieutenant Smith again pushed Mrs. Locke aside. She followed them down the stairs, screaming, and the officers pushed her away and struck her body with their nightsticks. She was dragged by the hair, and fell down several steps.

Mr. Locke, still struggling, was pushed into a patrol wagon. His wife followed, protesting; she called the

officers "pigs" and attempted to strike one of them on the back with her fists. The officers called her a pig as well, and pushed her into a patrol wagon.

Mr. and Mrs. Locke were taken to East Detective Division Headquarters, and locked in cells. In the course of this proceeding, Mrs. Locke, by reason of her condition and scanty attire, was the target of rude and offensive remarks from some of the policemen present. Mr. and Mrs. Locke remained at East Detective Division Headquarters until that evening, when additional clothing was obtained for Mrs. Locke, and both were taken to a hospital. Mr. Locke received five stitches for his head wound, Mrs. Locke was found to have a bruised foot, but no other medical problems developed.

After receiving hospital treatment, Mr. and Mrs. Locke were taken to the Police Administration Building and charged with assault and battery on a police officer, disorderly conduct, resisting arrest, threats to do bodily harm and breach of the peace. They were released on bail.

The house in which the Lockes resided was shared with another couple, Mr. and Mrs. William Perry. On September 23 and 24, police, armed with a search warrant, appeared at the house to search for drugs. The search was very thorough. The officers removed clothing from bureau drawers, and emptied sugar bowls and soap cartons in the course of the search. No drugs were found. The officers made no attempt to straighten up the disorder their search had caused.

On November 24, 1970, at 2 a.m., Mr. Perry was arrested in South Philadelphia and held in police custody until 11 p.m. The police informed him that he was being arrested for "conspiracy to commit terroristic vandalism," but no formal charges were ever filed against him.

20. *Thomas Lodico.* On September 24, 1970, shortly before 9 a.m., Thomas Lodico parked his car near Bartlett

Junior High School at 11th and Christian Streets, and proceeded to distribute to students several copies of the "Plain Dealer," an underground newspaper. Mr. Lodico was 23 years of age, white, and had long hair, a mustache and beard. Bartlett Junior High School is located in a predominately black neighborhood.

The newspaper which Lodico was distributing contained an article entitled "Fuck the Schools," and included a rather illegible cartoon which, arguably, depicts someone stabbing or otherwise assaulting a police officer. The text of the newspaper article included many words generally regarded as obscene.

Two police officers stopped Lodico and asked for a copy of the paper. Lodico gave them one. The officers expressed the view that the newspaper was "trash." The officers then summoned their supervisor, a sergeant, to the scene. The officers searched the back part of Lodico's car, where there was a pile of these newspapers.

A group of about 20 adults and children gathered at the scene. The adults complained about the paper which Lodico was distributing.

The officers thereupon handcuffed Lodico, placed him in the patrol wagon, and transported him to a district station. About 15 minutes later, he was taken to South Detective Division Headquarters, where he was photographed. Lodico requested a lawyer and stated that he did not wish to make any statement; nevertheless, he was questioned by various detectives about his associations with another underground newspaper. He was held in custody until about 12:30 p.m., when he was released. No charges were filed. He was not fed during his time in custody. During this same period, Lodico's automobile was taken by the police to the South Detective Division Headquarters, and was searched further.

21. *Joseph Sterling.* On September 24, 1970, at about 9:15 a.m., Joseph Sterling, who also worked for the Plain Dealer newspaper, drove his automobile slowly through the intersection of 11th and Christian Streets, and parked at an angle, whereupon he got out of his car and looked about in a confused manner. Mr. Sterling was white, 20 years old, and had long hair, a mustache and a beard.

A police officer (Rouse), who had observed Sterling's activities, stopped him and asked if anything was wrong. He noticed that Sterling's eyes seemed blood-shot, and that copies of the Plain Dealer were in Sterling's automobile. Officer Rouse then took Sterling into custody, and transported him to the district station, where Sterling was told that he was under arrest for driving while under the influence of narcotics. He was taken to the Police Administration Building in a patrol wagon, was fingerprinted and photographed, and voluntarily took a ballon test.

Sterling was permitted to make a phone call. He told the officers that he did not wish to make any statement until he had consulted a lawyer. Nevertheless, several detectives engaged him in a discussion involving his views on police activities and on the Vietnam war. He was interrogated about his use of drugs. He was not fed during his time in custody. At about 1 p.m., he was brought before a magistrate and was discharged.

22. *Mark Soto and Jerry Seriano.* On September 25, 1970, at approximately 10 p.m., police officer Charles Smith was called to the scene of a fist fight at Howard and York Streets. Approaching the area, he radioed for assistance. As the officer approached the scene, two males who appeared to have been engaged in a fight with each other stopped fighting, walked down York Street toward Hope Street, and again confronted each other as if to renew the fight. Officer Smith followed, and restrained one of the men against a parked car.

At this point, two other males grabbed Smith's arm and struck him with their fists, and one attempted to grab his gun. All three civilians then ran away.

A 15-year old black male, Mark Soto, was standing behind the officer; Smith apparently believed that he had been involved in the assault. Using the butt of his gun, Officer Smith struck Soto. Soto tried to run away, but Smith caught him and wrestled with him, striking Soto again with his weapon.

At this point, two other police officers arrived on the scene. One of them struck Soto on the head with his night stick, and Soto fell to the ground. Two officers then held Soto down. Soto continued to struggle and was kicked in the head by a police officer.

A crowd gathered. Some were shouting derogatory remarks, others merely pleaded with the officers to stop treating Soto so roughly. Bottles and bricks were thrown in the general vicinity.

Soto was taken in a patrol wagon to 26th District Headquarters, and was then taken to Episcopal Hospital where he received stitches for a head wound. He was then taken to 25th District Headquarters and held over night. During this period, various police called him a Panther and a "black nigger."

In the course of the foregoing incident, two other officers saw a Puerto Rican male throw a bottle in the direction of their police vehicle. The culprit disappeared down Waterloo Street. Shortly thereafter, the officers apprehended Jerry Serrano, a Puerto Rican male age 16, believing him to be the person who threw the bottle at them. Two other officers appeared to assist in the arrest. Serrano struggled to escape. The officers struck him approximately six times on his back and arms with nightsticks, and called him a "Spic."

Serrano was taken first to one police station then to another. Ultimately, he was charged with assault and battery and disorderly conduct. He was released to his father at 5 a.m. the following day. Serrano has consistently denied that he was guilty of any offense on the occasion in question.

A delegation headed by Mrs. Mary Rouse, of the COPPAR organization, went to the 26th District Headquarters to protest the treatment of Mark Soto. She asked to speak to the captain, but he was not present and the officer in charge refused to communicate with him. Mrs. Rouse then telephoned Lieutenant George Fencl, head of the Civil Disobedience Squad, and he and the district captain soon arrived. After speaking briefly with the protesting group, these officers then sent for a staff inspector. Arriving a short time later, the staff inspector met with representatives of the protesting group and recorded their complaints and promised a thorough investigation. However, neither the complainants nor the district captain ever heard anything further about the investigation.

23. *Ellis Steward.* On October 1, 1970, at about 3:30 p.m., Ellis Steward, a 52-year old black man, was driving in his car and picked up three young individuals. Sergeant Komada, patrolling in a police car, saw these persons get into Steward's car. One of them resembled a person known to Sergeant Komada as a narcotics user, and Sergeant Komada had been informed that a Negro male was selling narcotics in the area. Accordingly, Komada followed the Steward vehicle.

At Germantown Avenue, the three passengers got out of the car. Shortly thereafter, Mr. Steward stopped his car in response to Sergeant Komada's signals. Komada asked Mr. Steward for his vehicle registration, and ad-

vised him that the persons who had just been in his car were narcotics users. The first card Steward showed to Sergeant Komada was not his vehicle registration. Steward was ordered out of his car, and complied, and was frisked. This occurred in front of a factory from which workers were emerging at the change of shifts. Steward loudly objected to the police procedure, especially in front of a large number of people in an area where he was known. He informed the officer that he was physically disabled. Sergeant Komada then arrested Steward for disorderly conduct.

At that point a second officer (Flint) arrived on the scene, and the two policemen proceeded to handcuff Mr. Steward. Steward objected to being handcuffed and swung his arms about to evade the handcuffs, whereupon Officer Flint struck Steward on the shoulder and head with his blackjack. Steward and both officers fell to the ground in the scuffle. Steward was handcuffed and placed in a patrol wagon. Upon arrival at the 35th District Headquarters, Steward seemed to be unable to walk. He lay on the floor for about a half hour, and then was taken to a hospital, where a physician examined him and concluded that he was allright. He was then returned to the police station and formerly charged with disorderly conduct and resisting arrest. He was eventually released from custody at 3:30 a.m. the following morning. During his 12 hours in police custody, he was not fed. On October 21, 1970, he was convicted of the above charges in Philadelphia Municipal Court.

24. *Albert Boccuto and Anthony Dignetti.* On October 6, 1970, at about 6 p.m., a group of about 20 boys, ranging in age from 15 to 21, were playing football in a school yard at 3600 North Randolph Street. During the preceding two-year period, the police had received many com-

plaints from residents of the area and from the Board of Education to the effect that the school building was being vandalized and that young persons were drinking and breaking bottles in the school yard at night.

Officer Wells, patrolling nearby, new of these earlier complaints. He went to the school yard and told the boys to leave.

One of the youths, Albert Boccuto, age 17, Caucasian, did not immediately leave, and protested the validity of the officer's order. The officer radioed for assistance. Boccuto used obscene language to the officer, and the officer then told him that he was under arrest. The officer pushed Boccuto against a chain fence and held him by the hair to prevent his escape. Nearby residents gathered to witness the encounter.

Another white male, Anthony Dignetti, age 22, protested the officer's treatment of Boccuto. The officer told him that he also was under arrest. Both youths were then handcuffed and taken in a patrol wagon to the 35th District Headquarters. Other officers arriving on the scene dispersed the remaining crowd by waving their nightsticks.

Neither Boccuto nor Dignetti was told by the arresting officer why they were supposed to leave the school yard, nor why they were arrested. Boccuto was charged by juvenile officers with disorderly conduct and resisting arrest. He was held in a cell for several hours and then released. The charges were dismissed the next day. Dignetti was charged with disorderly conduct. He was held for three hours and then released; the charges were dismissed the next day.

Dignetti testified that, while being held at the police district headquarters, he was punched several times by a guard. The guard flatly denied any such incident. In the absence of any clear basis for assessing the relative credibility of these witnesses, I have concluded that the

evidence on this point is evenly balanced, and therefore make no finding that Dignetti was beaten.

About a month before the above incident, on September 4, 1970, at about 9 p.m., Albert Boccuto and a companion, Sammy Fabrizzo, were stopped by two police officers in the vicinity of 5th and Annsbury Streets. The officers held the boys at gunpoint, frisked them, asked them where they were going and what they were doing, and then permitted the boys to leave. It appears that the police had received numerous complaints from residents in the area, concerning groups of teenagers congregating on street corners and causing disturbances. The police response to these complaints was to disperse any crowds they saw on street corners, and to arrest anyone who failed to comply, on charges of "corner lounging" or disorderly conduct.

25. *Dwight Redding Byrd.* On October 12, 1970, at 1:15 p.m., Officers Winchester and Byrne observed one Dwight Redding Byrd, a Negro male, holding in his hand a 20-inch sword, partially removed from its wooden sheath. Several other Negro males, one of whom had a large stick in his hand, were walking away from Byrd.

Winchester approached Byrd, took the sword away from him, examined it, and advised Byrd that he was under arrest. He then attempted to place handcuffs on Byrd. Byrd pulled away, and the sword fell to the ground. In the meantime, Officer Byrne had stopped the other Negro males, and, with gun drawn, required them to lean against a wall, frisked them, and asked their identification.

As Byrd continued to struggle with Officer Winchester, flailing his arms and kicking, the unsheathed sword lay on the pavement about four feet away. Officer Byrne came to his fellow officer's assistance; neither officer picked up the sword.

After about a minute, Byrd picked up the sword and began to swing it over his head. The officers were standing in the street about five feet away from Byrd, backing away from him. Both officers drew their guns.

Byrd was speaking in a foreign tongue (possibly Arabic). He faced the officers, swinging the sword in front of his face. He stepped toward the officers, but did not point the sword at them or lunge at them.

The officers told Byrd to drop the sword. They repeated this instruction three or four times. When he failed to comply after about 30 seconds, Officer Byrne fired into Byrd's chest, and Winchester fired into Byrd's leg. Byrd fell to the sidewalk; 20 minutes later he was removed from the scene; he was pronounced dead on arrival at the hospital.

The District Attorney later ruled that the killing of Dwight Byrd was justifiable homicide.

26. *Mr. and Mrs. Leon Brown, and Edward Smalley.* On October 18, 1970, a Sunday, at about 2:30 p.m., four police officers assigned to the narcotics unit acted unreasonably in conducting a search of the residence of Mr. and Mrs. Leon Brown, 3943 North 10th Street, pursuant to a search warrant.

For present purposes, I shall assume, without deciding, that the search warrant was valid. The four officers, none of whom was in uniform, all of whom were casually dressed, knocked on the door, displayed their badges to Mrs. Brown's sister, who was looking out through the door window, and demanded entry. Without waiting for a response, they broke down the door, breaking it off its hinges. They then thoroughly ransacked the entire house.

Three officers invaded Mrs. Brown's bedroom on the second floor; she had just arisen from a nap, and was clad only in her underwear. She was ordered to remain

standing as the officers searched the bedroom. After some delay, she eventually was provided with a housecoat.

The officers emptied out drawers and closets in all of the rooms in the house, and overturned mattresses. They did not inform Mr. and Mrs. Brown the purpose of the search, until it had been in progress for several minutes. They then advised the Browns that they were looking for drugs, and checked the Browns' arms for signs of needle marks.

The police found no drugs, and left the premises after about a half hour. Before leaving, they put back some of the items which they had dumped from bureau drawers, but the premises were in considerable disorder after the police left. The front door was not repaired.

At about the same time that the above search was taking place, a similar search was conducted at 2619 West Lehigh Avenue, in which an Afro boutique shop occupied by a friend of the Browns, one Leonard Smalley, was located. Although the affidavit in support of the alleged search warrant indicated that the warrant was directed at the boutique shop, the officers searched the second and third floors of the building first, before proceeding to search the boutique shop. No one was present in the building when the police arrived. They broke the lock on the building door, searched upstairs, then broke the door to the boutique shop off its hinges and searched the shop.

No drugs were found, the merchandise was disarranged, and some items were stolen. The entire search took about a half hour.

Mr. Smalley learned of the search of his shop when, on behalf of the Browns, he inquired at the 22nd and Hunting Park Avenue Station as to the purpose of the search of the Brown residence. After observing the damage to his store, he returned to the police station on two or three occasions and asked to see the search warrant. No such warrant has ever been shown to him.

27. *Mrs. Irene Thompson.* On October 23, 1970, at about 4 p.m., an 11-year old Negro boy was caught shoplifting at a Woolworth Store on Chester Avenue. When he refused to give his name and address, the manager called the police.

Officer Leon Burke responded to the call. Holding the boy by his belt, he escorted him to the sidewalk. The boy then attempted to escape, and bit the officer on the finger. The officer lost his temper. He wrestled the boy to the sidewalk, fell on top of him, and repeatedly banged his head against the pavement. A crowd gathered, and complained of the officer's treatment of the boy.

Mrs. Irene Thompson, a black women, reasonably well educated and responsible, observed the officer's conduct. She had not known any of the persons involved previously. She was very disturbed at the incident, and made several attempts to complain about Officer Burke's conduct, and to inquire about what had happened to the boy.

The police were reluctant to listen to her; she was not permitted to talk to Officer Burke, even though he was present in the station house.

When Mrs. Thompson insisted that she wished to make a complaint, it was finally arranged that one of the police officers would listen to her. However, as she was explaining the incident to him, he kept defending the conduct of Officer Burke. Mrs. Thompson was told to return to the police station the following Monday. She did so, but was told that no one knew anything about the matter.

Mrs. Thompson has never received any information from any police or city source concerning her complaint, or concerning the boy who had been mistreated.

H. *Statistics*

At the request of the Court, certain statistical information has been furnished by the defendants. The period covered by these statistics runs from January 1, 1968 to July 1, 1970. During that period, 2,339 persons were arrested and charged with assault and battery on a police officer or resisting arrest. In 1,451 of these cases (62 percent), either no other charges were filed, or the other charges were limited to such crimes as disorderly conduct, breach of the peace, interfering with an officer, intoxication, or incitement to riot.

During the same period, 2,709 cases which included charges of resisting arrest or assault and battery on a police officer were disposed of. Seventy-eight percent of the defendants were exonerated (67 percent before trial). Only 26 percent of these cases resulted in convictions for disorderly conduct, breach of the peace, threats, or intoxication.

By way of comparison, there were a total of 97,688 arrests in 1968, of which 17,960 were for serious offenses; there were 99,932 arrests in 1969, of which 18,103 were for serious offenses; and there were 101,552 arrests in 1970, of which 20,769 were for serious offenses. The term "serious offenses", as used in the foregoing statistics, means murder, rape, robbery, aggravated assault and battery, burglary, larceny of automobile, and larceny involving goods valued at more than $50.

The COPPAR organization received approximately 200 complaints of police misconduct during the first eight months of 1970.[1]

[1] At a post-hearing conference in January 1973, both sides were afforded an opportunity to reopen the hearings in order to produce evidence of any pertinent changes in procedures, or other relevant circumstances, which may have occurred since the briefs were filed. In the absence of any request for reopening, the cases are being disposed of on the existing record.

II. DISCUSSION

Careful evaluation of all of this mass of evidence leads inescapably, and perhaps not surprisingly, to the conclusion that, while the overall situation is not as bad as the plaintiffs contend, neither is it as acceptable as the defendants contend.

At the outset, it may be appropriate to register a few general observations about the difficult problems of the police of our society, and the practical limitations upon the role of courts in resolving disputes of the kind represented by this litigation. It is a truism that the multitude of social ills afflicting our society bear most heavily upon the poor, and especially upon the black poor. These same social ills spawn much of the activity which society regards as criminal. Society as a whole, in the ghettos as well as in the suburbs, looks to the police for protection against criminal activity. The policeman is not responsible for the deplorable conditions in which the underprivileged exist, but he is charged with responsibility for dealing at first-hand with the more egregious results of these conditions. To the deprived, he can easily become the symbol of society's oppression, and the target for undifferentiated hostility generated by causes having no direct relationship to police conduct.

Police traditionally are trained and function as a quasi-military organization. Generally speaking, they are required to enforce the law as it is written. They are required to obey orders, and to exact obedience from others. The tactics of police enforcement involve a considerable measure of naked power. Dealing so frequently with persons who have no respect for law or for the police function, the policeman cannot always rely upon peaceful and reasonable persuasion as the instrument of choice.

The hazards of police work are very real and pervasive. The conduct of individual officers in stressfilled situations should not be judged by the standards of armchair hindsight.

And finally, departmental routine in a large police department is necessarily somewhat cumbersome and time-consuming. The record is replete with instances of this problem. Typically, an individual is stopped by a patrolling police officer and questioned briefly about some actual or suspected misfeasance. If he does not give a satisfactory account of himself, he is taken to the precinct office. After some delay and processing there, if further questioning is desired, he is transported to the Detective Division for interrogation and further processing. Thereafter, he is transported to the Police Administration Building in center-city ("The Roundhouse") for further questioning and, perhaps, detention, formal charges, and a preliminary hearing. Where there was probable cause for the original arrest, the entire process would seem to be unobjectionable. But the record makes clear that this practice is not limited to probable cause situations.

From the record as a whole, it is impossible to avoid the conclusion that, in the absence of probable cause for arrest, at least two classes of individuals are particularly likely to be subjected to this kind of procedure: poor blacks, and individuals who question or protest the initial police contact. It is apparent from this record that a substantial number of policemen genuinely believe (a) that if an individual is freed without formal charges within 24 to 48 hours after his initial arrest, he should not object to the inconvenience involved; (b) that a person who questions the propriety of police conduct, or refuses to cooperate with the police, should expect to be inconvenienced, or worse; and (c) that if it is ultimately established that there was probable reason to believe an

individual guilty of an offense, his treatment at the hands of the police should be judged by different standards than those applicable to the innocent. And, needless to say, such incidents are viewed by the police and the detainees from entirely different perspectives; a course of events which, to the policeman, are merely routine "police procedure" often appear to the civilian involved to be drastic and outrageous encroachments upon his liberty and privacy.

Problems similar to those presented in this case have been the subject of a great deal of learned commentary. *See,* for example, Skolnick: Justice without Trial, Law Enforcement in a Democratic Society (1966); Westley: Violence and the Police: A Sociological Study of Law, Custom, and Morality (1970); Chevigny: Police Power, Police Abuses in New York City (1969); Niederhoffer; Behind the Shield, the Police in Urban Society (1967). Two presidential commissions have addressed themselves extensively to these issues: The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Police (1967), at pp. 178-207 (in which, incidentally, the Philadelphia Highway Patrol is described as a "skull-cracking division"); Report of the National Advisory Commission on Civil Disorders, Ch. 11 (1968). A review of this material suggests that the problems disclosed by the record in the present case are not new, and are fairly typical of the problems afflicting police departments in major urban areas.

The totality of the evidence in this case convincingly establishes the following general conclusions:

1. Violations of the legal and constitutional rights of citizens are committed by only a small percentage of the members of the police force.

2. Nevertheless, such violations do occur, entirely too frequently.

3. The evidence does not disclose any conscious departmental policy of racial bias, or of discriminatory enforcement on racial lines.

4. The presence of racial prejudice on the part of an individual police officer, manifested in the performance of his police duties, is unlikely to be reflected adversely in the performance ratings accorded him by his superiors.

5. Existing procedures for handling civilian complaints and for enforcement of police discipline related to civilian complaints is totally inadequate. It is the policy of the department to discourage the filing of such complaints, to avoid or minimize the consequences of proven police misconduct, and to resist disclosure of the final disposition of such complaints.

The evidence discloses that violations of legal and constitutional rights of citizens by the police are most widespread in the following areas of police activity:

(1) Arrests "for investigation"; (2) Treatment of citizens who question or criticize what the police are doing in a particular instance; (3) Charges of resisting arrest, when the arrest was unlawful in the first place; (4) extreme overreaction to actual or reported assaults upon policemen.

Before discussing the ultimate issue as to whether or not the plaintiffs are entitled to relief in this proceeding, various legal issues must be resolved.

The defendants filed motions to dismiss in both cases, pursuant to Federal Rule of Civil Procedure 41(b), apparently on the theory that the Court lacks the power to grant injunctive relief in situations of this kind. However, when a pattern of frequent police violations of rights is shown, the law is clear that injunctive relief may be

granted. *Lewis, et al.* v. *Kugler, et al.*, 446 F.2d 1343 (3d Cir. 1971).

Defendants in the *Goode* case also seek dismissal on the ground that indispensable parties (Officers DeFazio and D'Amico) were not joined. I agree that, in the absence of these individuals as parties to the lawsuit, no relief which directly affects them may properly be granted. However, the evidence concerning these two officers is relevant, and may properly be considered, in connection with the issues involving the remaining defendants.

In the *COPPAR* case, the defendants moved to dismiss the complaint on the ground that it was too vague and general to state a cause of action under § 1983. While the complaint is probably insufficient on that ground, *see Negrich* v. *Hohn*, 379 F.2d 213 (3d Cir. 1967), this defect was remedied by requiring the plaintiffs to provide a list of witnesses and a brief description of each incident charged, in advance of the hearings in this case.

The District Attorney has moved to dismiss the complaint in the *COPPAR* case. To the extent that some of the plaintiffs originally sought injunctions against pending criminal prosecutions, the motion clearly is meritorious. *Younger* v. *Harris*, 401 U.S. 37 (1972). However, this Court, early in the proceedings, declined to grant such relief, and the plaintiffs in question appeared to have abandoned this issue. In view of the District Attorney's relationship to the handling of civilian complaints against police misconduct, he was properly retained as a party to the litigation.

At an earlier stage of the proceedings, I informally granted the defense motion to dismiss the case with respect to the Black Panther Party and the Young Lords Party, because of their refusal to submit to discovery. That ruling will now be formalized. Elimination of these organizations as parties plaintiff does not, of course, preclude consideration of the evidence relating to these or-

ganizations or their members in connection with the issues raised by the other plaintiffs.

Defendants in the *COPPAR* case have also argued that COPPAR has no standing to bring this action, and is not a proper representative of the class of plaintiffs. I believe COPPAR does have the requisite standing. *See NAACP* v. *Button,* 271 U.S. 415 (1963); *Smith* v. *Board of Education of Morrilton School District,* 365 F.2d 770 (8th Cir. 1966).

On September 4, 1970, I entered an injunction in the *COPPAR* case, restraining the police from violating the constitutional rights of citizens in certain enumerated respects. The Ellis Steward incident and the Johnson and Simon incident occurred while this injunction was in effect, and plaintiffs seek an adjudication of contempt. While it appears that the order of this Court was violated, particularly in the Johnson and Simon case, this may have been due to a lack of precision in the framing of the injunctive order. Although it is a close question, I am not persuaded that the violation was willful. The police apparently were not aware that what they did amounted to an arrest.

In both cases, the captions should be amended to designate Mr. Rizzo as the Mayor, and Mr. Thomas O'Neill as the Police Commissioner, and to reflect such other personnel changes as have occurred in the interim.

As noted earlier, the evidence in this case does not establish the existence of any overall Police Department policy to violate the legal and constitutional rights of citizens, nor to discriminate on the basis of race. The record does establish, however, that such violations do occur, with such frequency that they cannot be dismissed as rare, isolated instances; and that little or nothing is done by the city authorities to punish such infractions, or to prevent their recurrence. I am convinced that, except in cases of severe injuries, existing remedies are inadequate to protect the public interest involved. Private suits for damages are expensive, time-consuming, not readily available, and not notably successful; moreover, they have no preventive effect. Except in extreme cases, criminal prosecutions are unlikely; and, in any event, given the dual role of the District Attorney's staff, such prosecutions are a most unsatisfactory vehicle for vindication of the rights involved.

Respect and admiration for the performance of the vast majority of police officers cannot justify refusal to confront the reality of the abuses which do exist. But deference to the essential role of the police in our society does mandate that intrusion by the courts into this sensitive area should be limited, and should be directed toward insuring that the police themselves are encouraged to remedy the situation.

In the course of these proceedings, much of the argument has been directed toward the proposition that courts should not attempt to supervise the functioning of the police department. Although, contrary to the defendants' assertions, the Court's legal power to do just that is firmly established, *see,* for example, *Hague* v. *CIO,* 307 U.S. 496 (1938); *Lankford* v. *Gelston,* 364 F.2d 197 (4th Cir. 1966); *Belknap* v. *Leary,* 427 F.2d 496 (2d Cir. 1970); *Lewis, et al.* v. *Kugler, et al., supra. And see The Federal Injunction as a Remedy for Unconstitutional Police Conduct,* 78 Yale L.J., 143 (1968); and *cf. Holt* v. *Sarver,* 442 F.2d 304 (8th Cir. 1971) (prison conditions), I am not persuaded that any such drastic remedy is called for, at least initially, in the present cases.

To a large extent, consideration of sweeping injunctive relief in the present cases has been obviated by the consent injunctive decree in the *Alexander* v. *Rizzo* case (C.A. No. 70-992). Although the point has not been raised by the parties, it would seem that this decree should be accorded *res judicata,* or at least collateral estoppel, effect,

at least with respect to the abuses inherent in initial police contacts and arrests "for investigation." In any event, the entry of that decree should go far to eliminate many of the abuses complained of in the present cases.

While there are additional areas of police misconduct asserted in the present case, to which a further injunctive decree might be directed, I am satisfied that the establishment of adequate procedures for handling and adjudicating civilian complaints against the police would go far to prevent further abuses, and to reduce the friction which the existing procedures, or lack of procedures, generate.

There are four principal defects in the present arrangement. (1) The departmental procedures are geared to handle infractions of police rules and regulations, yet these rules and regulations are not framed to cover specific violations of the legal and constitutional rights of civilians; (2) Complaints are handled on a "chain of command" basis, and this results in a tendency to minimize and discourage civilian complaints; (4) The existing procedures do not provide adequate opportunity for the civilian complainant to present his case, before a relatively objective tribunal; and (4) The outcome of the proceeding is not disclosed.

In attempting to frame an appropriate remedy in this litigation, the existence of sharp philosophical differences over the issue of civilian review of police activities cannot be overlooked. The defendants, and police generally, strongly oppose the entire concept of civilian review. Plaintiffs, on the other hand, appear to contend that no other solution is feasible. It is not the function of a court to attempt to resolve this doctrinal controversy; such issues are best resolved in the legislative and executive branches of government, and ultimately in the polling places. But it is the obligation of a federal court, under the Civil Rights Act, to take appropriate action to prevent recurring and otherwise predictable violations of the constitutional rights of citizens. If this can be accomplished without imposing some form of civilian review, that course of action seems preferable, since it would represent the least drastic of possible alternatives. But if, after a reasonable opportunity for experimentation, the police themselves prove unable to reduce the abuses complained of to an acceptable minimum, then some form of civilian intervention, whether by a civilian administrative agency, or by injunctive decree, may become necessary.

In conformity with the views expressed above, the defendants will be required to formulate and submit to this Court for approval, a comprehensive program for dealing adequately with civilian complaints alleging police misconduct. It is suggested that the following guidelines should be carefully considered in such formulation: (1) Appropriate revision of police manuals and rules of procedure spelling out in some detail, in simple language, the "do's and don'ts" of permissible conduct in dealing with civilians (for example, manifestations of racial bias, derogatory remarks, offensive language, etc.; unnecessary damage to property and other unreasonable conduct in executing search warrants; limitations on pursuit of persons charged only with summary offenses; recording and processing civilian complaints, etc.); (2) Revision of procedures for processing complaints against police, including (a) ready availability of forms for use by civilians in lodging complaints against police officers; (b) a screening procedure for eliminating frivolous complaints; (c) prompt and adequate investigation of complaints; (d) adjudication of non-frivolous complaints by an impartial individual or body, insulated so far as practicable from chain of command pressures, with a fair opportunity afforded the complainant to present his complaint, and to the police officer to present his defense; and (3) prompt notification to the concerned parties, informing them of the outcome.

In this connection, I note that the plaintiffs have contended that, so long as the final decision is reviewable by the Police Commissioner, any such procedure is likely to prove inadequate. I am not persuaded that this necessarily follows. Some worthwhile analogies may perhaps be derived from the recent improvements in handling disciplinary matters in the military forces. It has apparently been feasible in the Armed Forces to provide relatively impartial adjudications, essentially unfettered by command pressures, while still retaining control by the military. If, in notifying the complainant as to the disposition of his complaint, a brief statement of the reasons for the disposition were also required, arbitrary or erroneous rejection of legitimate complaints would be unlikely.

It should be mentioned that the foregoing guidelines are consistent with generally recognized minimal standards for improving police-community relations. They impose no substantial burdens on the Police Department, and pose no threat to vigorous law enforcement. They afford protection to the accused policeman, as well as to the complaining civilian.

In conclusion, it should perhaps be emphasized that this Court has not decided that the plaintiffs and the class they represent have a constitutional right to improved departmental procedures for handling civilian complaints against police. What the Court has decided is that, under existing circumstances, violations of constitutional rights by police do occur in an unacceptably high number of instances; that, in the absence of change in procedures, such violations are likely to continue to occur; and that revision of procedures for handling civilian complaints is a necessary first step in attempting to prevent future abuses.

An appropriate order will be entered in each of the two cases.

JOHN P. FULLAM

J.

ORDER DATED MARCH 14, 1973

AND NOW, this 14th day of March, 1973, it is ORDERED:

1. The Black Panther Party and the Young Lords Party are stricken from the caption of the case as plaintiffs, and as to those plaintiffs the complaint is DISMISSED.

2. The remaining plantiffs are directed to make appropriate amendments to the caption of the case, to reflect changes in personnel which have occurred during the pendency of this lawsuit.

3. The defendants, acting jointly or separately, as they may prefer, are directed, within thirty (30) days from the date of this Order, to submit to this Court for its approval a comprehensive program for improving the handling of citizen complaints alleging police misconduct, in conformity with the views expressed in the Opinion of this Court filed this date. A copy of such proposal shall be submitted to counsel for the plaintiffs. Counsel for the plaintiffs may submit counterproposals, if desired, within ten (10) days thereafter.

JOHN P. FULLAM

J.

Order

ORDER DATED MARCH 14, 1973

AND NOW, this 14th day of March, 1973 it is ORDERED:

1. The plaintiffs are directed to make appropriate amendments to the caption of the case, to reflect changes in personnel which have occurred during the pendency of this lawsuit.

2. The defendants, acting jointly or separately, as they may prefer, are directed, within thirty (30) days from the date of this Order, to submit to this Court for its approval a comprehensive program for improving the handling of citizen complaints alleging police misconduct, in conformity with the views expressed in the Opinion of this Court filed this date. A copy of such proposal shall be submitted to counsel for the plaintiffs. Counsel for the plaintiffs may submit counterproposals, if desired, within ten (10) days thereafter.

JOHN P. FULLAM

J.

Letter, John McNally, Esq.

LETTER, JOHN McNALLY, ESQ., DATED APRIL 12, 1973, WITH ENCLOSURES (DRAFT OF "DIRECTIVE 127" AND ATTACHMENTS)

Hon. John P. Fullam
United States District
Court for the Eastern
District of Pennsylvania
6049 U. S. Court House
Ninth and Market Street
Philadelphia, Pa. 19107

April 12, 1973

Re: Council of Organizations on
Philadelphia Police Accountability and Responsibility, et al
vs.
James H. J. Tate, et al
Civil Action—No. 70-2430

Gerald G. Goode, et al
vs.
James H. J. Tate, et al
Civil Action—No. 70-491

Dear Judge Fullam:

The Police Department of the City of Philadelphia has taken the following steps to comply with your Decree of March 14, 1973, in the above case:

1. Manuals which are already in existence are herewith submitted, which show the instructions given to all incoming policemen in regard to community relations and their actions toward citizens. I believe that these manuals comply with the first guideline set forth in your Opinion.

2. The procedures for processing civilian Complaints have been completely revised. There was in existence a Police Directive 127, which has been

amended. To show the complete change, I am enclosing a copy of the existing regulation which went into effect on March 31, 1967, and the present regulation which is being adopted as of now.

A new form which will be supplied to each Police District and to which any complaining citizen will have access at his nearest Police District.

3. The new procedures, you will note, provide for immediate investigation, the sifting out of frivolous complaints and an adjudication of non-frivolous complaints by the Board of Inquiry.

The Notice of Hearing will state that the complaintant may be present with both witnesses and an attorney.

4. There is a provision in the new Directive 127 for prompt notification to the concerned party.

I have also attached a copy of the Control Log, which will be used in the recording of these complaints. Each Complaint Form will have a number so that there will have to be an explanation by the various districts of any missing numbers, which should make it impossible for a complaint to be recorded and then thrown in the waste basket.

The Training Manuals which I have submitted cover many subjects not directly relating to the police contacts with citizens. I have suggested to the Police Department that we immediately prepare a manual which will be limited to the subjects contained in your Opinion and, this manual will be handed out to the policemen under separate cover.

Sincerely yours,

JOHN M. MCNALLY, JR.
First Deputy City Solicitor

JMMcN:cmg
Enc.

DEFENDANTS' PROPOSED ORDER FOR IMPLEMENTATION OF THE MARCH 14, 1973 ORDER OF THE COURT DATED APRIL 12, 1973

PHILADELPHIA POLICE DEPARTMENT — Directive 127

Subject: CITIZEN'S COMPLAINTS AGAINST POLICE

I. POLICY

A. All citizen's complaints against police officers shall be accepted and investigated and complainants will be notified of the action taken by the Police Department.

B. Special pre-numbered complaint forms entitled "Citizen's Complaint Report" shall be supplied in quantity to all Police Districts and Units and each district/unit shall be accountable for the allocated numbers issued.

C. A control log of sequential numbers shall be maintained in each Operations Room.

D. The Internal Affairs Bureau shall be the central control agency for the Police Department in all cases of citizen's complaints against police.

E. A Staff Inspector will be available to receive complaints from the nine police divisions on a 24-hour basis.

II. PROCEDURE FOR RECORDING AND PROCESSING COMPLAINTS

A. The Operations Supervisor in the district/unit receiving the complaint shall:

1. Provide to the complainant a "Citizen's Complaint Report" and instruct the complainant to fill in the required information on the form and sign it.
2. Record on the Control Log the Report Number, the D.C. Number, the complainant's name, address and

date and time of complaint and name of Staff Inspector notified.

3. Prepare a 75-48, completing all block headings and Code 2703, "Complaints Against Police".
4. Notify the Staff Inspector on duty and record his name, date and time of notification on the Citizen's Complaint Report.
5. Affix signature and badge number.
6. Distribute the completed Citizen's Complaint Report as follows:

   Original — Chief Inspector, Internal Affairs Bureau
   1st Copy — Staff Inspector notified
   2nd Copy — District/Unit Commanding Officer
   3rd Copy — Complainant
7. Distribute 75-48 as follows:

   White — Reports Control and Review
   Yellow — District/Unit Commander
   Pink — Staff Inspector notified

B. The Staff Inspector on duty shall:

1. Evaluate complaint and if possible, interview the complainant by phone and select one of the following:
   a. If an immediate investigation is indicated, confer with the pertinent Chief Inspector who will ensure that a proper investigation is initiated.
   b. Refer to the pertinent District/Unit Commanding Officer for investigation.

C. Assigned Investigator will prepare an Investigation Report (75-49) and distribute as follows:

Original — Reports Control and Review
Yellow — Chief Inspector, Internal Affairs Bureau

Pink — Pertinent Detective Division Commander (if investigation reveals a crime has been or may have been committed)
Goldenrod — Staff Inspector notified
Green — Pertinent District/Unit Commanding Officer
Blue — Police Department's legal advisor (Hold until investigation is completed and submit with copies of all related case material)

III. COMPLAINTS RECEIVED IN DISTRICT OTHER THAN THE DISTRICT OF OCCURRENCE

A. Complaints received in a district or unit other than the district or unit of occurrence shall be processed in the following manner:

1. The Operations Supervisor in the district/unit where complaint is being reported shall:
   a. Have the complainant fill out a "Citizen's Complaint Report" as outlined in Section II of this directive.
   b. Obtain a D.C. Number from the district of occurrence and insert on "Citizen's Complaint Report" and on the Control Log.
   c. Notify Staff Inspector on duty.
   d. Prepare 75-48 and distribute as follows:

      Original — Reports Control and Review
      Yellow — Pertinent District/Unit Commander
      Pink — Staff Inspector notified

IV. ANONYMOUS COMPLAINTS

A. Complaints received from persons who wish to remain anonymous shall be received, recorded and processed in the same manner as outlined herein with the excep-

tion that the Operations Room Supervisor shall fill out the "Citizen's Complaint Form" and in space provided for complainant's signature, shall indicate "anonymous complainant".

B. The Staff Inspector on duty shall evaluate the anonymous complaint and determine the degree of investigation to be given such complaint

V. COMPLAINTS RELATIVE TO CRIMES

A. If the complaint alleges to a crime and subsequent investigation establishes the fact, the provision as outlined in Directive 79 shall be followed.

VI. RESULTS OF INVESTIGATION

A. On all complaints where an investigation is initiated, a copy of the case and the results of the investigation will be forwarded to the Police Department's Legal Advisor, who will contact the complainant and inform him/her of the action taken by the Police Department.

B. If the matter is referred to the Police Board of Inquiry for review and recommendation to the Commissioner, the complaint shall be advised of such referral.

VII.

In every case where referral is made to the Police Board of Inquiry, the complainant shall be given not less than ten (10) days written notice of the hearing. Such notice shall expressly state that complainant has the right to appear, with or without counsel and with such other witnesses as he or she desires to present.

VIII.

The hearing shall be conducted by the Police Board of Inquiry which shall make its decision and recommendation to the Commissioner as promptly as pos-

sible. The Commissioner will provide the Legal Advisor with a copy of the decision and recommendation so that he may inform complainant in accordance with paragraph VI. A.

CITIZEN COMPLAINT REPORT

Name (Last) (First) (Middle) | Address (City) (State)

Telephone Number | Date of Birth | Male ☐ Female ☐ | Martial Status | Occupation

Location Complaint Reported | Time Complaint Reported | Location of Incident | Date of Incident | Time of Incident

Representative/Interpreter/ Person Assisting | Address | Telephone Number

Name(s) of Officer(s) Complained Against (If Known) | Rank | Badge Number | District/Unit | Assignment (Foot, Auto)

Age | Height | Weight | Color Hair | Color Eyes | Race | Scars

What Occurred?

What were you doing before the incident?

What was the officer doing before the incident?

This case is heard by the Police Board of Inquiry will you be willing and able to appear against the police officer involved?

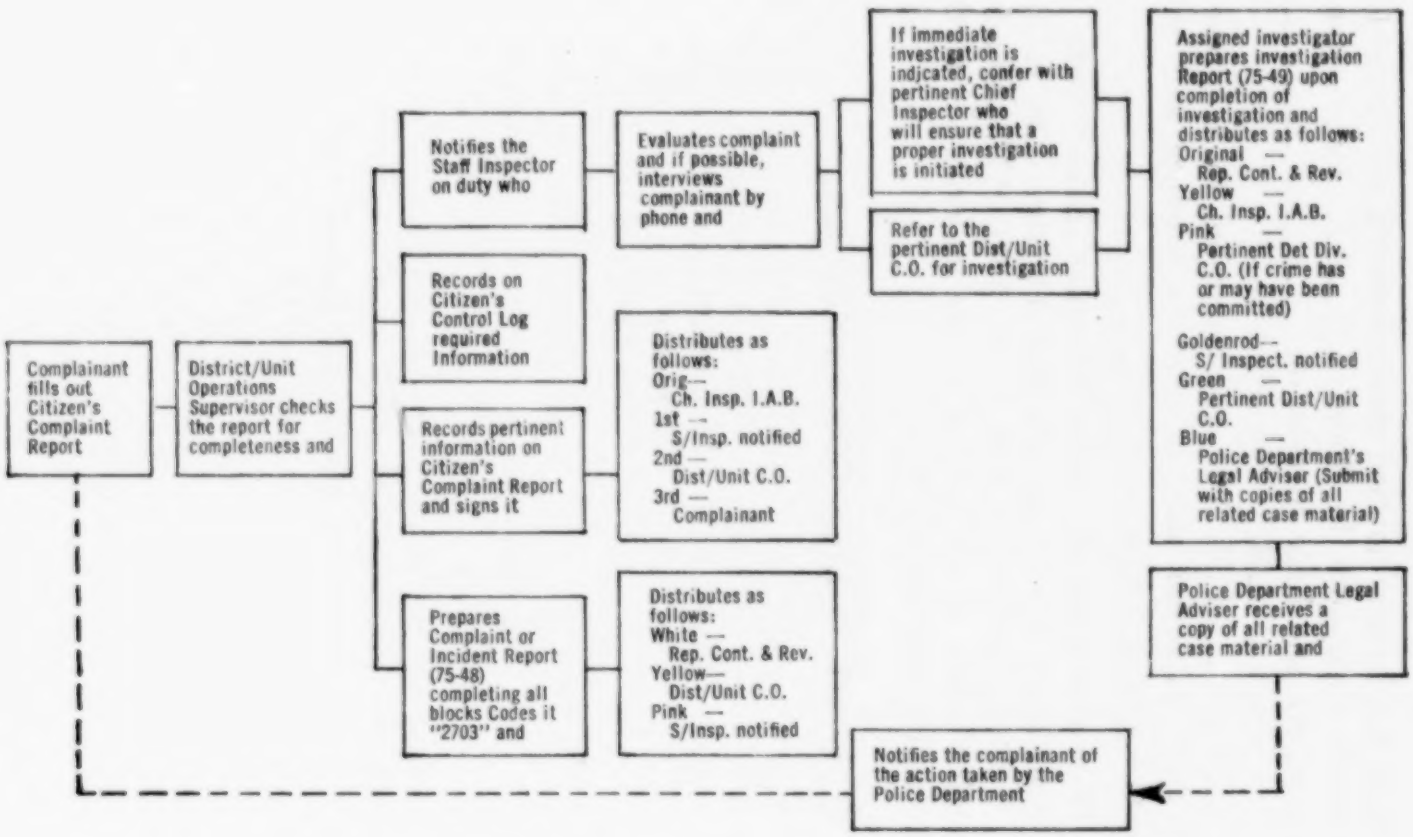
Signature of complainant | Date

Staff inspector notified | Date and Time Notified

Signature of officer receiving complaint

CITIZEN'S COMPLAINT CONTROL LOG (Type or Print—Use Ball Point Pen)			City of Philadelphia POLICE DEPARTMENT		DISTRICT/UNIT
Report Number	DC Number	Complainant's Name and Address	Date & Time Received	Received By:	Staff Inspector Notified

REPORT NUMBERS MUST BE IN CHRONOLOGICAL ORDER—VOIDED NUMBERS MUST BE FULLY EXPLAINED—ALL VOIDED REPORTS MUST BE SENT INTACT TO INTERNAL AFFAIRS BUREAU.



You are hereby notified that a hearing will be held in the above Complaint in Room_____, Police Headquarters, 8th and Race Streets, on_____, at_____A.M. P.M. You are requested to be present with such witnesses as you care to produce and with counsel if you so desire.

If you require additional information pertaining to this hearing, you may contact the undersigned by calling MU 6-3281, from 9:00 A.M. until 5:00 P.M., Monday through Friday, or by writing to the undersigned at the address indicated above.

FOR THE POLICE COMMISSIONER:

ANGELO A. PIROLLO
Lieutenant #122
Advocate
Police Board of Inquiry

AAP/cm

PHILADELPHIA POLICE DEPARTMENT — Directive 127 (3-31-67)

SUBJECT: COMPLAINTS AGAINST POLICE OFFICERS

I. POLICY

A. All complaints against police officers received by members of this department shall be recorded and referred to the Commanding Officer of district/unit for investigation.

II. PROCESSING COMPLAINTS

A. Complaints received will be brought to the attention of the Operations Room Supervisor. Complaints shall be recorded on a Complaint and Incident Report (75-48). A district complaint number shall be assigned each complaint received. These reports shall be coded 2703 "COMPLAINTS AGAINST POLICE".

B. Distribution:
White —General Services
Yellow—District/Unit Commander
Pink —Staff Inspectors

C. An Investigation Report (75-49) will be prepared at the direction of the Commanding Officer and shall contain the following information:
1. Statement of Complaint
2. Statement of Officer
3. Results of Investigation
4. Action Recommended

D. Distribution of Investigation Report (75-49)
Original —General Services Division
Yellow —District File

Pink —Detective Division (if applicable)
Goldenrod—Chief Inspector
Green —Division Commander
Blue —District or Unit Commander

III. COMPLAINTS RECEIVED IN DISTRICT OTHER THAN THE DISTRICT OF OCCURRENCE

A. Complaints received in a district or unit other than the district or unit of occurrence shall be processed by:
   1. Operations Room Supervisor receiving complaint shall obtain a District Complaint number charged to the district of occurrence, and shall prepare an Incident and Complaint Report (75-48).
   2. Operations Room Supervisor of the district/unit receiving complaint shall immediately notify the lieutenant of the district/unit in which the complaint occurred. The lieutenant in the district of occurrence shall determine the urgency of forwarding the Incident and Complaint Report (75-48).
   3. Operations Room Supervisor of the district/unit receiving complaint shall record on the "Sending and Receiving Sheet" the date, time and name of person notified concerning the police complaint.

IV. ANONYMOUS COMPLAINTS

A. Complaints received from persons who wish to remain anonymous shall be processed in the same manner as any other complaint. Failure to take anonymous complaints may be ignoring legitimate grievances. Commanding Officers shall evaluate the degree of investigation to be given anonymous complaints. In all instances an Incident and Complaint Report (75-48) shall be prepared.

V. COMPLAINTS RELATIVE TO CRIMES

A. The lieutenant shall evaluate all complaints and notify the District Commander immediately, when necessary.

B. If the complaint establishes a crime the Detective Division Supervisor shall be notified and such notification shall be recorded on the district/unit "Sending and Receiving" sheet.

BY COMMAND OF THE POLICE COMMISSIONER

Directive 127

LETTER, PETER HEARN, ESQ., DATED APRIL 24, 1973, WITH ENCLOSURES

April 24, 1973

Honorable John P. Fullam
6049 United States Court House
Ninth and Chestnut Streets
Philadelphia, Pennsylvania 19107

RE: Gerald G. Goode, et al., v. Frank L. Rizzo, et al.,
Civil Action No. 70-491

Dear Judge Fullam:

I am enclosing duplicate copies of:

1. Plaintiffs' Memorandum in Response to Defendants' Plan for the Handling of Citizen Complaints Against Police; and

2. Proposed Order.

The originals of these documents have been filed with the Clerk.

Plaintiffs request an early meeting with the Court at which counsel for defendants can give his comments to plaintiffs' counterproposal and the form of the Court's eventual order can be discussed.

Respectfully submitted,

Peter Hearn
PH/gnc—Enclosures
cc: John M. McNally, Jr., Esquire (w/encs.)
Robert M. Landis, Esquire (w/encs.)
Frederick L. Ballard, Esquire (w/encs.)
Charles C. Hileman, Esquire (w/encs.)
Harry Lore, Esquire (w/encs.)

PLAINTIFFS' PROPOSED ORDER FOR IMPLEMENTATION OF THE MARCH 14, 1973 ORDER OF THE COURT DATED APRIL 24, 1973

In The United States District Court
For The Eastern District of Pennsylvania

Gerald G. Goode, et al.
v.
Frank L. Rizzo, et al.

CIVIL ACTION NO. 70-491

ORDER

And Now, this day of , 1973, after consideration of the proposals and counterproposals presented to the Court, pursuant to the Opinion and Order entered March 14, 1973, concerning the formulation of procedures by the Philadelphia Police Department for the receipt, investigation and disposition of civilian complaints concerning police misconduct, It Is Hereby Ordered that:

1. Defendant Joseph F. O'Neill, Police Commissioner, shall forthwith promulgate as an intra-departmental directive procedures for the receipt, investigation and disposition of civilian complaints of police misconduct, substantially in the form of the procedures attached to this Order as Appendix "A". Such directive shall, in addition to normal departmental distribution, be posted prominently in a conspicuous position at the reception desk of the Police Administration Building, at all district/unit headquarters, at the Mayor's Office for Information and Complaints, at the reception area of the Philadelphia Commission on Human Relations, and at such other places as the Commissioner may determine to be appropriate for the effective dissemination of information to individuals having contact with Philadelphia police officers.

Copies of the directive shall be maintained in quantity at all of the above locations and shall be provided upon request to any persons either specifically requesting copies of the directive or inquiring generally into the procedures for lodging complaints against police officers.

2. (a) Within fifteen (15) days from the date of this Order, the Philadelphia Police Department shall promulgate a form (Citizen's Complaint Report) for the use of complaining parties in lodging complaints against police officers.

(b) The Citizen's Complaint Report shall designate and provide adequate space for, the names, address and telephone number of the complainant; the name, address and telephone number (if known) of the alleged victim of police misconduct if other than the complainant; the name, badge number or other identifying characteristics of the police officer(s) against whom the complaint is lodged; the date, time and location of the incident giving rise to the complaint; a narrative description of the events giving rise to the complaint; the names, addresses and telephone numbers of other witnesses to the alleged incident (if known); the names, badge numbers, or other identifying characteristics of other Police Department personnel witnessing or involved in the incident giving rise to the complaint; a statement whether the complainant, the alleged victim of police misconduct (if other than the complainant) or any other witness to the alleged incident was questioned, detained, arrested and/or charged with criminal behavior as a result of the events giving rise to the complaint; the name, address and telephone number of any attorney or other representative of the complainant to whom communications concerning the complaint, its investigation and disposition should be addressed in lieu of the complainant (applicable only where the victim of

the alleged police misconduct is himself the complainant); a place for the signature of the complainant.

(c) Within five (5) days following receipt of the proposed form by the Court and by the attorneys for plaintiffs herein, the attorneys for plaintiffs shall forward to the Court their comments and alternative suggestions, if any.

. (d) Within thirty (30) days from the further Order of this Court approving a form for the receipt of complaints, the Philadelphia Police Department shall cause sufficient copies of the approved Citizen's Complaint Report to be printed and distributed in accordance with the further provisions of this Order.

(e) Sufficient quantities of the Citizen's Complaint Report shall at all times be maintained at the following locations: a designated office within the Police Administration Building; all district/unit headquarters; the Mayor's Office for Information and Complaints; the main office of the Philadelphia Commission on Human Relations; a designated office of the District Attorney's Office.

3. Civilian complaints of police misconduct which have been, or may be, received by the Philadelphia Police Department between the entry of the Order of this Court dated March 14, 1973 and the date on which an approved Citizen's Complaint Report is promulgated in accordance with the foregoing paragraph 2 of this Order shall be processed in accordance with the procedures attached hereto, notwithstanding the initial unavailability of the official Citizen's Complaint Report form. All persons who have lodged complaints during such interim period shall be notified in writing of the existence of the directive and of the official complaint form, which notice shall enclose copies of the directive and of the approved form. Failure

of any person to resubmit his complaint upon the approved form shall not, however, constitute cause for the termination of the investigation and disposition of his complaint in the manner provided in the attached procedures.

4. Within thirty (30) days from the date of this Order, the Philadelphia Police Department shall file with the Court and serve upon counsel for plaintiffs a copy of the proposed manual for the training of police recruits, limited to the matters expressed in the Opinion and Order of this Court dated March 14, 1973. Within fifteen (15) days thereafter plaintiffs may file with the Court and serve upon defendants their additional or alternative suggestions, if any, concerning the contents of such manual.

5. Within sixty (60) days from the date of this Order, defendants shall file with the Court and serve upon plaintiffs a detailed report on the state of their compliance with this Order, including the number of complaints received and being processed in conformity with the attached procedures. In addition, defendants shall file with the Court and serve upon plaintiffs copies of the directive promulgated by the Police Commissioner and of the approved Citizen's Complaint Report forms as soon as the directive and forms have been printed and made available in conformity with this Order.

BY THE COURT:

J.

APPENDIX "A"

PHILADELPHIA POLICE DEPARTMENT Directive 127

Subject: CITIZEN'S COMPLAINTS AGAINST POLICE

I. POLICY

A. All citizen's complaints against police officers shall be received, investigated and disposed of in accordance with the procedures set forth herein, and complainants will be notified of the action taken by the Police Department.

B. Copies of this directive and special pre-numbered complaint forms entitled "Citizen's Complaint Report" shall be supplied in quantity to all Police Districts and Units and each district/unit shall be accountable for the allocated numbers issued. Additional copies of this directive and of such forms shall be supplied in quantity to the Philadelphia Commission on Human Relations and to the District Attorney's office.

C. A control log of sequential numbers shall be maintained in each Operations Room.

D. The Internal Affairs Bureau shall be the central control agency for the Police Department in all cases of citizen's complaints against police.

E. A Staff Inspector will be available to receive complaints from the nine police divisions on a 24—hour basis.

F. Either upon specific request, or in the event that a person requests general information concerning the lodging of civilian complaints against police officers, all departmental personnel shall refer such person to the nearest location where copies of the Citizen's Complaint Report may be obtained.

II. PROCEDURE FOR RECORDING AND PROCESSING COMPLAINTS

A. The Operations Supervisor in the district/unit receiving the complaint shall:

1. Provide to the complaint a Citizen's Complaint Report and instruct the complainant to fill in the required information on the form and sign it. In no event shall any Departmental personnel attempt to discourage or otherwise influence any person from lodging his complaint.
2. Record on the Control Log the Report Number, the D.C. Number, the complainant's name and address, the date and time of the complaint, and the name of Staff Inspector notified.
3. Prepare a 75-48, completing all block headings and Code 2703, "Complaints Against Police."
4. Notify the Staff Inspector on duty and record his name, date and time of notification on the Citizen's Complaint Report.
5. Affix signature and badge number.
6. Distribute the completed Citizen's Complaint Report as follows:

   Original —Chief Inspector, Internal Affairs Bureau
   1st Copy—Staff Inspector notified
   2nd Copy—District/Unit Commanding Officer
   3rd Copy—Complainant
7. Distribute 75-48 as follows:

   White —Reports Control and Review
   Yellow —District/Unit Commander
   Pink —Staff Inspector notified

B. The Staff Inspector on duty shall evaluate the complaint and if possible, interview the complainant by phone. If an immediate investigation is indicated, the Staff Inspector shall confer with the pertinent Chief Inspector who will ensure that a proper investigation is initiated.

III. COMPLAINTS RECEIVED IN DISTRICT OTHER THAN THE DISTRICT OF OCCURRENCE

A. Complaints received in a district or unit other than the district or unit of occurrence shall be processed in the following manner:

1. The Operations Supervisor in the district/unit where complaint is being reported shall:
   a. Have the complainant fill out a Citizen's Complaint Report as outlined in Section II of this directive.
   b. Obtain a D.C. Number from the district of occurrence and insert on Citizen's Complaint Report and on the Control Log.
   c. Notify Staff Inspector on duty.
   d. Prepare 75-48 and distribute as follows:

      Original —Reports Control and Review
      Yellow —Pertinent District/Unit Commander
      Pink —Staff Inspector notified

IV. INVESTIGATION OF COMPLAINTS

A. Upon receipt of the Citizen's Complaint Report, the Chief Inspector, Internal Affairs Bureau, shall immediately assign a member of his staff who shall have responsibility for the investigation of the alleged incident. All such investigations shall be initiated and

completed by the staff of the Internal Affairs Bureau and no such complaint shall be referred for investigation to the commanding officer of the police officer against who the complaint is lodged or to any other officer of the Philadelphia Police Department.

B. The investigation by the Internal Affairs Bureau shall include, but need not be limited to, the following: interviews with the complaining witness, the alleged victim of police misconduct (if other than the complaining witness), and all other witnesses to the incident who are indicated on the complaint form; interviews with the police officer against whom the complaint is lodged and all other police officers witnessing or involved in the alleged incident; interviews with all other witnesses to the alleged incident who became known to the investigating officer as a result of his investigation; view and analysis of all physical evidence, if any, associated with the alleged incident; in the event that a criminal complaint has been lodged against any witness or participant in the event, a review and analysis of the investigation file compiled by the Police Department or the District Attorney's office in connection with such criminal complaint; such other investigative steps as may appear appropriate in the experience of the assigned investigator.

C. The assigned investigator shall attempt to secure written statements from all participants in and witnesses to the alleged incident but, where any witness or participant is unwilling to make a signed written statement, the assigned investigator shall provide his own written summary of the oral statement, if any, provided by such participant or witness. No participant or witness shall be required or coerced into making an oral or written statement against his will. Where a written statement is given and signed by a participant or

witness, the assigned investigator shall provide the person making such statement with a copy.

D. All investigations shall be completed within 45 days from the date of receipt of the complaint form by the Internal Affairs Bureau, except for extenuating circumstances stated in the file and approved by the Chief Inspector, Internal Affairs Bureau.

E. 1. When a complainant is unable to identify the police officer against whom a complaint is lodged by name or badge number, the complaint shall be forwarded to the Internal Affairs Bureau and the investigation shall commence in accordance with the procedures set forth above. In addition to the procedures set forth above, however, the assigned investigator shall make every effort to assist the complainant in making a positive identification of the police officer.

2. Where sufficient facts are adduced by a complainant (e.g. identifying number of police car, identity of other police officers in the vicinity and participating or witnessing the event, patrol sector, time and date, physical description and the like), the assigned investigator shall provide the complainant with the opportunity to view photographs of the population of the police officers most likely to include the officer against whom the complaint is lodged or, where possible, shall provide the complainant with other opportunity to make a positive identification.

F. 1. Upon completion of his investigation, the assigned investigator will prepare an Investigation Report (75-49) and distribute as follows:

Original —Reports Control and Review
Yellow —Chief Inspector, Internal Affairs Bureau

Pink —Pertinent Detective Division Commander (if investigation reveals a crime has been or may have been committed)
Goldenrod —Staff Inspector notified
Green —Pertinent District/Unit Commanding Officer
Blue —Police Department's legal advisor (hold until investigation is completed and submit with copies of all related case material).

2. Together with the yellow copy of the Investigation Report (75-49) the assigned investigator shall forward the entire investigative file (which shall include the Citizen's Complaint Report, or other report of complaint and all investigative notes and statements) to the Chief Inspector, Internal Affairs Bureau.

3. The Chief Inspector, Internal Affairs Bureau, or a Staff Inspector assigned to him, shall promptly review the entire file and shall determine the accuracy of the Investigation Report provided by the assigned investigator. Upon completion of the review (including revision and redistribution of the Investigation Report if necessary or the completion of further investigation which the Chief Inspector may direct), the entire file shall be forwarded to the Police Commissioner together with a recommendation of the Chief Inspector, Internal Affairs Bureau, concerning the appropriate disposition of the complaint.

4. Except for extenuating circumstances stated in the file, the file and the recommendation of the Chief Inspector, Internal Affairs Bureau, shall be forwarded to the Police Commissioner within 50 days

of receipt by the Internal Affairs Bureau of the Citizen's Complaint Report.

V. *ANONYMOUS COMPLAINTS*

A. In all instances in which an anonymous complaint is received by a member of the Police Department concerning allegations of misconduct, the individual receiving the complaint shall notify the anonymous complainant of the availability of the procedures for lodging a formal complaint.

B. Should the anonymous complainant persist in his desire to remain anonymous, the individual receiving the complaint shall elicit all facts which the complainant can provide and shall record and process the complaint in the same manner as outlined herein with the exception that the Operations Room Supervisor shall fill out the "Citizen's Complaint Form" and in space provided for complainant's signature, shall indicate "anonymous complainant".

C. Upon receipt, the Internal Affairs Bureau shall make such investigation of the alleged incident as is possible based upon the facts presented. Where the information permits the identification of the alleged victim of police misconduct or of any witness to the alleged incident, the investigating officer shall contact the alleged victim (or shall contact such other witnesses in an attempt to determine the identity of the alleged victim) and shall inform him of the opportunity to lodge a formal complaint.

D. In the event that the alleged victim of police misconduct is identified, contacted by the investigating officer and informed of the formal complaint procedures, the failure of the alleged victim to execute a formal complaint shall be grounds for termination of the investigation. Where, however, the alleged victim

cannot be identified but investigation of the facts adduced by the anonymous complainant provides supportive evidence for an act of police misconduct by an identified police officer, the investigating officer shall complete the investigation to the extent possible and shall submit his report in the manner herein provided.

VI. *COMPLAINTS RELATIVE TO CRIMES*

A. If the complaint alleges a crime and subsequent investigation establishes the fact, the provision as outlined in Directive 79 shall be followed.

VII. *DISPOSITION OF COMPLAINTS*

A. Upon receipt of the file and the recommendation of the Chief Inspector, Internal Affairs Bureau, the Commissioner of Police or a Deputy Commissioner assigned by him, shall review the entire file and determine the appropriate disposition of the complaint.

B. 1. In all cases in which the facts are not in dispute and Commissioner determines that the accused police officer is guilty of misconduct, the Commissioner shall impose such sanctions upon the offending officer as he shall deem appropriate.

2. In all cases in which the file discloses that the facts concerning the charge are in dispute and require resolution in order to determine whether the officer is guilty of improper conduct, the Commissioner shall certify the complaint to the Police Board of Inquiry ("Board") for a hearing.

3. In all cases in which the facts are not in dispute and the Commissioner determines either that there is no probable cause to believe that the police officer committed the alleged act or that the act complained of did not constitute improper behavior,

the Commissioner may certify the file closed and the investigation complete and direct that no further action to be taken in regard to the complaint.

C. 1. The action of the Commissioner in disciplining the offending officer, in certifying the complaint to the Board or in terminating the investigation shall be communicated in writing, by certified mail, to the complainant and to the alleged victim of the police misconduct (if other than the complainant) or to the attorney or other representatives of the alleged victim identified in the Citizen's Complaint Report. The action of the Commissioner shall also be so forwarded in writing to the officer against whom the charge was made.

2. Except for extenuating circumstances stated in the file, the determination of the Commissioner and the notice to the parties to the complaint shall be made within 60 days from the receipt of the complaint by the Internal Affairs Bureau.

3. In those instances in which the Commissioner terminates the investigation without certification to the Board for hearing, the notice to the complainant and to the alleged victim shall include a summary of the investigative findings and the reason for the Commissioner's action, and shall set forth the procedure stated herein below for review of the Commissioner's determination.

4. When the Police Commissioner determines to terminate the investigation and close the file without hearing, the alleged victim of police misconduct may, within 10 days from receipt of notice by the Commissioner, make written request of the Board for a review of the Police Commissioner's determination. When timely request is made, each

member of the Board, or the Board sitting together, shall review the entire file and, where two or more members of the Board believe that further inquiry is warranted, the Board shall so notify the Commissioner who shall promptly certify the complaint for hearing. Notice of the determination of the Board shall be given in writing by the Commissioner to the alleged victim or to his attorney or other representative designated in the Citizen's Complaint Report.

VIII. *HEARINGS*

A. Upon certification by the Commissioner of a complaint to the Board for hearing, the Board shall schedule a hearing to be held within 20 days from the certification of a complaint. Not less than 10 days' written notice of the time and place of the hearing shall be given by certified mail to the complainant and to the alleged victim of the police misconduct (if other than the complainant) or to his attorney or other representative designated in the Citizen's Complaint Report, and to the police officer charged with misconduct.

B. Continuances or other delays in the scheduled hearing date may be granted only by a member of the Board or a duly authorized administrative assistant of the Board, in writing, for cause given by the party requesting such continuance or delay. Where a continuance is granted, the hearing shall be rescheduled to be held within 10 days from the date of the first scheduled hearing, if possible, and notice shall be given to the parties by certified mail.

C. Hearings shall be informal and strict rules of evidence will not be applied. The assigned investigator and any officers against whom charges have been placed shall attend. All parties may be represented by counsel or

other representative and shall have the right to present evidence and to examine and cross-examine witnesses. A stenographic record shall be kept and shall be made available, at cost, to any party to the proceedings requesting same. All hearings shall be open to the public, except that hearings may be closed by the Board where necessary to maintain order.

D. The Board, after hearing, shall make written findings of fact and based thereon shall find the police officer or officers against whom the complaint has been lodged either "guilty" or "not guilty" of misconduct. The failure of the alleged victim of police misconduct to appear and to present evidence may, in the discretion of the Board, constitute grounds for termination of the hearing and the entrance of a "not-guilty" finding. Copies of the Board's findings of fact and of the Board's recommendation, if any, to the Commissioner for disciplinary action against a police officer found "guilty" of misconduct shall be forwarded to all parties by certified mail and to the Commissioner of Police.

E. The Commissioner may approve or reject the findings and/or recommendations of the Board within 30 days following receipt of their written findings of fact and recommendation, if any. If rejected, the Commissioner may modify the disciplinary action recommended by the Board or may reinstitute proceedings before the Board in accordance with existing departmental disciplinary procedures. The determination of the Commissioner to accept, modify or reject the findings and recommendation of the Board shall be transmitted in writing to all parties and to the Board.

IX. *MAINTENANCE OF RECORDS*

A. Following determination by the Commissioner of the final disposition of the complaint, the entire investi-

gative file or a true copy of the entire file and a copy of the written findings and recommendation of the Board, if any, shall be maintained at a designated location in the Police Administration Building and shall be made available to the public during normal working hours. All files, records, findings and recommendations shall be maintained permanently, and shall be made available for inspection as aforesaid for not less than two (2) years following the date of final disposition of the complaint by the Commissioner.

B. At all times following completion of the investigation by the Internal Affairs Bureau, the entire investigative file, the Investigation Report, all physical evidence, if any, shall be made available upon request for inspection by the complaint, by the alleged victim of police misconduct (if other than the complainant) or the attorney or other designated representative of the alleged victim.

C. A copy of the final determination of the Commissioner shall be maintained in the personnel file of the officer or officers involved together with the findings and recommendations of the Board, if any. In those instances in which a complaint is terminated prior to a hearing, a copy of the complaint and of the determination of the Commissioner shall likewise be maintained in the personnel file of the officer or officers involved. The personnel file of the officer or officers involved shall not be available to the public.

X. *CIVIL SERVICE PROCEDURES*

The within procedures shall be in addition to and not in derogation of the procedures existing from time to time for preservation of the rights of police officers pursuant to the Civil Service Code and Regulations of the City of Philadelphia.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 70-491

GERALD G. GOODE, et al.

v.

FRANK L. RIZZO, et al.

PLAINTIFFS' MEMORANDUM IN RESPONSE TO DEFENDANTS' PLAN FOR THE HANDLING OF CITIZEN COMPLAINTS AGAINST POLICE

In response to the court's Order of March 14, 1973, the defendants[1] have submitted to the Court for its approval a program for handling citizen complaints alleging police misconduct. Under the same order, plaintiffs were given an opportunity to submit comments and any counter-proposals they wished to make. The following is submitted pursuant to that Order.

A. *Defendants' Proposed Program.*

Defendants' proposed program represents little more than a cosmetic patch-up of a previous program (Directive 127, dated March 31, 1967) which was inadequate in concept and ignored in practice. Their proposal fails to remove the complaint procedure from the chain of command as the Court has directed. There is no clear designation of responsibility for investigation. There is no statement of what minimum elements the investigation must include. There is no standard to determine when a case should be submitted to the Police Board of Inquiry for a hearing. The procedures to be used at such a hearing are

[1] By means of a Substitution filed with the Court on March 19, 1973, the original defendants have been replaced by those individuals now holding the offices involved in this litigation.

not spelled out. And finally, nowhere in the proposed program is it stated who will make the decision concerning the validity of a complaint and what, if any, disciplinary steps are indicated.

To remedy these defects, plaintiffs have submitted a new plan which adheres as closely as possible to the provisions of Directive 127 insofar as the routing of documents and the imposition of responsibility are concerned but which meets the minimum standards plaintiffs believe are necessary to achieve the objectives mandated by the Court.

B. *Plaintiffs' Program.*

Initially, it should be noted that the plaintiffs' program retains the adjudicatory function within the Police Department. Plaintiffs believe that the first effort directed by the Court to improve the handling of complaints should give the Department the opportunity to "take care of its own."[2] Moreover, any police officer who is the subject of a citizen's complaint will have the assurance, under this plan, that he will be judged by other police officers who are sensitive to the problems and vicissitudes of police duty.[3]

While the plaintiffs believe that police adjudication of police is desirable, at least initially they realize that there must be checks against the overly tolerant attitudes of senior police officers reflected in the record in the *Goode* and *COPPAR* cases. According to plaintiff's plan, these checks consist of (1) a rigidly mandated procedure for

[2] By asserting in their proposed plan that adjudicatory responsibility should be lodged within the Department, plaintiffs do not foreclose themselves from taking a contrary position at a later date in the event the procedures ordered by the Court do not achieve the desired result of reducing the unacceptably high number of illegal police acts in dealing with citizens.

[3] Acts of misconduct rising to the level of a crime would, of course, be adjudicated in a court of law as well.

the investigation and handling of complaints[4] and (2) the availability of the results for public scrutiny. In return for the police having the right to adjudicate charges of alleged police misconduct, the public has a right to be assured that a competent and fair investigation is conducted, and to know that the results will be available for scrutiny by both the individual complainant and the news media.

The plaintiffs' plan therefore consists of the following elements:

1. A detailed complaint form designed to record relevant information of both the anonymous and the identified complainant.

2. Provision for the ready availability of such forms at numerous locations throughout the City.

3. Removal of investigational responsibility from the chain of command and the lodging of it within the Internal Affairs Bureau of the Department.

4. Provision for minimum standards of investigation including the taking of written or oral statements from all witnesses identified by the complainant as well as all Department witnesses.

5. The imposition of maximum time limits to assure a prompt handling of complaints consistent with the need for thoroughness of investigation.

6. Provision to assist the complaining witness in identifying the police officer in question if such assistance should be needed.

[4] In order to give the defendants a prior opportunity to revise their own procedures consistent with the Court's opinion, plaintiffs have not included substantive standards for the determination of "guilt" or for the appropriate discipline in a given instance. They may seek to have such standards inserted at a later date in the event th procedural proposals do not achieve the desired result.

7. Transmission of the complaint and the resulting investigation to the Police Commissioner or a Deputy Commissioner designated by him. At this point, a determination is made that either the police officer is at fault or that there is no probable cause to believe that the police officer committed the alleged act complained of. In these situations, the Police Commissioner or his Deputy either takes the appropriate disciplinary action or certifies the file closed with a directive that no further action be taken regard to the complaint. Notice of the action taken, together with a summary of the reasons therefor, issues at this time to the complainant.

8. Provision that where the investigational file discloses a conflict of facts and indicates the desirability of a hearing to achieve the proper result, the Commissioner may certify the complaint to the Police Board of Inquiry for a hearing.

9. Provision that in the event the case goes to the Police Board of Inquiry certain procedures including the complainant's representation by counsel shall be followed. After hearing the complaint, the Police Board of Inquiry will submit to the Commissioner or his Deputy for a final decision its factual findings and recommendations.

10. Provision that the results of the required investigation, hearing before the Police Board of Inquiry, if any, and adjudication by the Commissioner or his Deputy shall be public records available for inspection for two years after the date of final disposition of the complaint.

Contrary to the statement in the Court's opinion, plaintiffs in the *Goode* case have not taken the position that vesting the final adjudication in the Police Commissioner will necessarily prove to be inadequate. Rather, they have consistently adhered to the view that these matters should initially be entrusted to the Police Commissioner as long as there is a mandated procedure governing the processing and investigation of complaints. This will provide assurance that his decision will be based upon full and adequate facts.

Probably the strongest check against possible abuse under plaintiffs' proposed procedure is public scrutiny. All results of investigations, hearings before the Police Board of Inquiry, and decisions by the Commissioner or his Deputy shall be matters of public record. They shall be available to both the complainant and to the news media for two years. Plaintiffs believe that without this element of accountability to the public, there will be no adequate method to determine whether the revised proceedings have been implemented and are being carried out.

Respectfully submitted,

PETER HEARN
JACK LEVINE
F. JOHN HAGELE
Attorneys for Plaintiffs

DATED: April 24, 1973

DEFENDANTS' PROPOSED FINAL JUDGMENT
FILED SEPTEMBER 18, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 70-491

GERALD G. GODDE, et al.
v
FRANK L. RIZZO, et al.

FINAL JUDGMENT

AND Now, this day of 1973, following a trial before the undersigned District Judge wherein the issues were duly tried and a decision rendered,

It is ORDERED and ADJUSTED that:

1. Defendant Joseph F. O'Neill, Police Commissioner shall forthwith promulgate as an intra-departmental directive procedures for the receipt, investigation and disposition of civilian complaints of police misconduct, substantially in the form of the procedures attached to this Order as Appendix "A". Such directive shall, in addition to normal departmental distribution, be posted prominently in a conspicuous position at the reception desk of the Police Administration Building, at all district/unit headquarters, at the Mayor's Office for Information and Complaints, at the reception area of the Philadelphia Commission on Human Relations, and at such other places as the Commissioner may determine to be appropriate for the effective dissemination of information to individuals having contact with Philadelphia police officers.

Copies of the directive shall be maintained in quantity at all of the above locations and shall be provided upon request to any persons either specifically requesting copies of the directive or inquiring generally into the procedures for lodging complaints against police officers.

2. (a) Within fifteen (15) days from the date of this Order, the Philadelphia Police Department shall promulgate a form (Citizen's Complaint Report) for the use of Complaining parties in lodging complaints against police officers.

(b) The Citizen's Complaint Report shall designate and provide adequate space for, the name, address and telephone number of the complainant, the name, address and telephone number (if known) of the alleged victim of police misconduct if other than the complainant; the name, badge number or other identifying characteristics of the police officer(s) against whom the complaint is lodged; the date, time and location of the incident giving rise to the complaint; a narrative description of the events giving rise to the complaint; the names, addresses and telephone numbers of other witnesses to the alleged incident (if known); the names, badge numbers, or other identifying characteristics of other Police Department personnel witnessing or involved in the incident giving rise to the complaint; a statement whether the complainant, the alleged victim of police misconduct (if other than the complainant) or other witness to the alleged incident was questioned, detained, arrested and/or charged with criminal behavior as a result of the events giving rise to the complaint; the name, address and telephone number of any attorney or other representative of the complainant to whom communications concerning the complaint, its investigation and disposition should be addressed in lieu of the complainant (applicable only where the victim of the alleged police misconduct is himself the complainant); a place for the signature of the complainant.

(c) Within five (5) days following receipt of the proposed form by the Court and by the attorneys for plaintiffs herein, the attorneys for plaintiffs shall forward

to the Court their comments and alternative suggestions, if any.

(d) Within thirty (30) days from the further Order of this Court approving a form for the receipt of complaints, the Philadelphia Police Department shall cause sufficient copies of the approved Citizen's Complaint Report to be printed and distributed in accordance with the further provisions of this Order.

(e) Sufficient quantities of the Citizen's Complaint Report shall at all times be maintained at the following locations: a designated office within the Police Administration Building; all district/unit headquarters; the Mayor's Office for Information and Complaints; the main office of the Philadelphia Commission on Human Relations; a designated office of the District Attorney's Office.

3. Within thirty (30) days from the date of this Order, the Philadelphia Police Department shall file with the Court and serve upon counsel for plaintiffs a copy of the proposed manual for the training of police recruits, limited to the matters expressed in the Opinion and Order of this Court dated March 14, 1973. Within fifteen (15) days thereafter plaintiff may file with the Court and serve upon defendants their additional or alternative suggestions, if any, concerning the contents of such manual.

4. Defendants shall file with the Court and serve upon plaintiffs copies of the directive promulgated by the Police Commissioner and of the approved Citizen's Complaint Report forms as soon as the Directive and forms have been printed and made available in conformity with this Order.

BY THE COURT:

J.

PHILADELPHIA POLICE DEPARTMENT Directive 127

Subject: CITIZEN'S COMPLAINTS AGAINST POLICE

I. POLICY

A. All citizen's complaints against police officers shall be accepted and investigated and complainants will be notified of the action taken by the Police Department.

B. Special pre-numbered complaint forms entitled "Citizen's Complaint Report" shall be supplied in quantity to all Police Districts and Units and each district/unit shall be accountable for the allocated numbers issued.

C. A control log of sequential numbers shall be maintained in each Operations Room.

D. The Internal Affairs Bureau shall be the central control agency for the Police Department in all cases of citizen's complaints against police.

E. A Staff Inspector will be available to receive complaints from the nine police divisions on a 24-hour basis.

II. PROCEDURE FOR RECORDING AND PROCESSING COMPLAINTS

A. The Operations Supervisor in the district/unit receiving the complaint shall:

1. Provide to the complainant a "Citizen's Complaint Report" and instruct the complainant to fill in the required information on the form and sign it.

2. Record on the Control Log the Report Number, the D.C. Number, the complainant's name, address and date and time of complaint and name of Staff Inspector notified.

3. Prepare a 75-48, completing all block headings and Code 2703, "Complaints Against Police".
4. Notify the Staff Inspector on duty and record his name, date and time of notification on the Citizen's Complaint Report.
5. Affix signature and badge number.
6. Distribute the completed Citizen's Complaint Report as follows:

   Original — Chief Inspector, Internal Affairs Bureau
   1st Copy — Staff Inspector notified
   2nd Copy — District/Unit Commanding Officer
   3rd Copy — Complainant
7. Distribute 75-48 as follows:

   White — Reports Control and Review
   Yellow — District/Unit Commander
   Pink — Staff Inspector notified

B. The Staff Inspector on duty shall:
   1. Evaluate complaint and if possible, interview the complainant by phone and select one of the following:
      a. If an immediate investigation is indicated, confer with the pertinent Chief Inspector who will ensure that a proper investigation is initiated.
      b. Refer to the pertinent District/Unit Commanding Officer for investigation.

C. Assigned Investigator will prepare an Investigation Report (75-49) and distribute as follows:

   Original — Reports Control and Review
   Yellow — Chief Inspector, Internal Affairs Bureau
   Pink — Pertinent Detective Division Commander (if investigation reveals a crime has been or may have been committed)

   Goldenrod — Staff Inspector notified
   Green — Pertinent District/Unit Commanding Officer
   Blue — Police Department's legal advisor (Hold until investigation is completed and submit with copies of all related case material)

III. COMPLAINTS RECEIVED IN DISTRICT OTHER THAN THE DISTRICT OF OCCURRENCE

A. Complaints received in a district or unit other than the district or unit of occurrence shall be processed in the following manner:
   1. The Operations Supervisor in the district/unit where complaint is being reported shall:
      a. Have the complainant fill out a "Citizen's Complaint Report" as outlined in Section II of this directive.
      b. Obtain a D.C. Number from the district of occurrence and insert on "Citizen's Complaint Report" and on the Control Log.
      c. Notify Staff Inspector on duty.
      d. Prepare 75-48 and distribute as follows:

         Original — Reports Control and Review
         Yellow — Pertinent District/Unit Commander
         Pink — Staff Inspector notified

IV. ANONYMOUS COMPLAINTS

A. Complaints received from persons who wish to remain anonymous shall be received, recorded and processed in the same manner as outlined herein with the exception that the Operations Room Supervisor shall fill out the "Citizen's Complaint Form" and in space provided for complainant's signature, shall indicate "anonymous complainant".

B. The Staff Inspector on duty shall evaluate the anonymous complaint and determine the degree of investigation to be given such complaint.

V. COMPLAINTS RELATIVE TO CRIMES

A. If the complaint alleges to a crime and subsequent investigation establishes the fact, the provision as outlined in Directive 79 shall be followed.

VI. RESULTS OF INVESTIGATION

A. On all complaints where an investigation is initiated, a copy of the case and the results of the investigation will be forwarded to the Police Department's Legal Advisor, who will contact the complainant and inform him/her of the action taken by the Police Department.

B. If the matter is referred to the Police Board of Inquiry for review and recommendation to the Commissioner, the complaint shall be advised of such referral.

VII.

In every case where referral is made to the Police Board of Inquiry, the complainant shall be given not less than ten (10) days written notice of the hearing. Such notice shall expressly state that complainant has the right to appear, with or without counsel and with such other witnesses as he or she desires to present.

VIII.

The hearing shall be conducted by the Police Board of Inquiry which shall make its decision and recommendation to the Commissioner as promptly as possible. The Commissioner will provide the Legal Advisor with a copy of the decision and recommendation so that he may inform complainant in accordance with paragraph VI. A.

CITIZEN COMPLAINT REPORT

Name (Last) (First) (Middle) | Address | (City) | (State)

Telephone Number | Date of Birth | Male ☐ Female ☐ | Marital Status | Occupation

Location Complaint Reported | Time Complaint Reported | Location of Incident | Date of Incident | Time of Incident

Representative/Interpreter/ Person Assisting | Address | Telephone Number

Name(s) of Officer(s) Complained Against (If Known) | Rank | Badge Number | District/Unit | Assignment (Foot, Auto)

Age | Height | Weight | Color Hair | Color Eyes | Race | Scars

What Occurred?

What were you doing before the incident?

What was the officer doing before the incident?

This case is heard by the Police Board of Inquiry will you be willing and able to appear against the police officer involved?

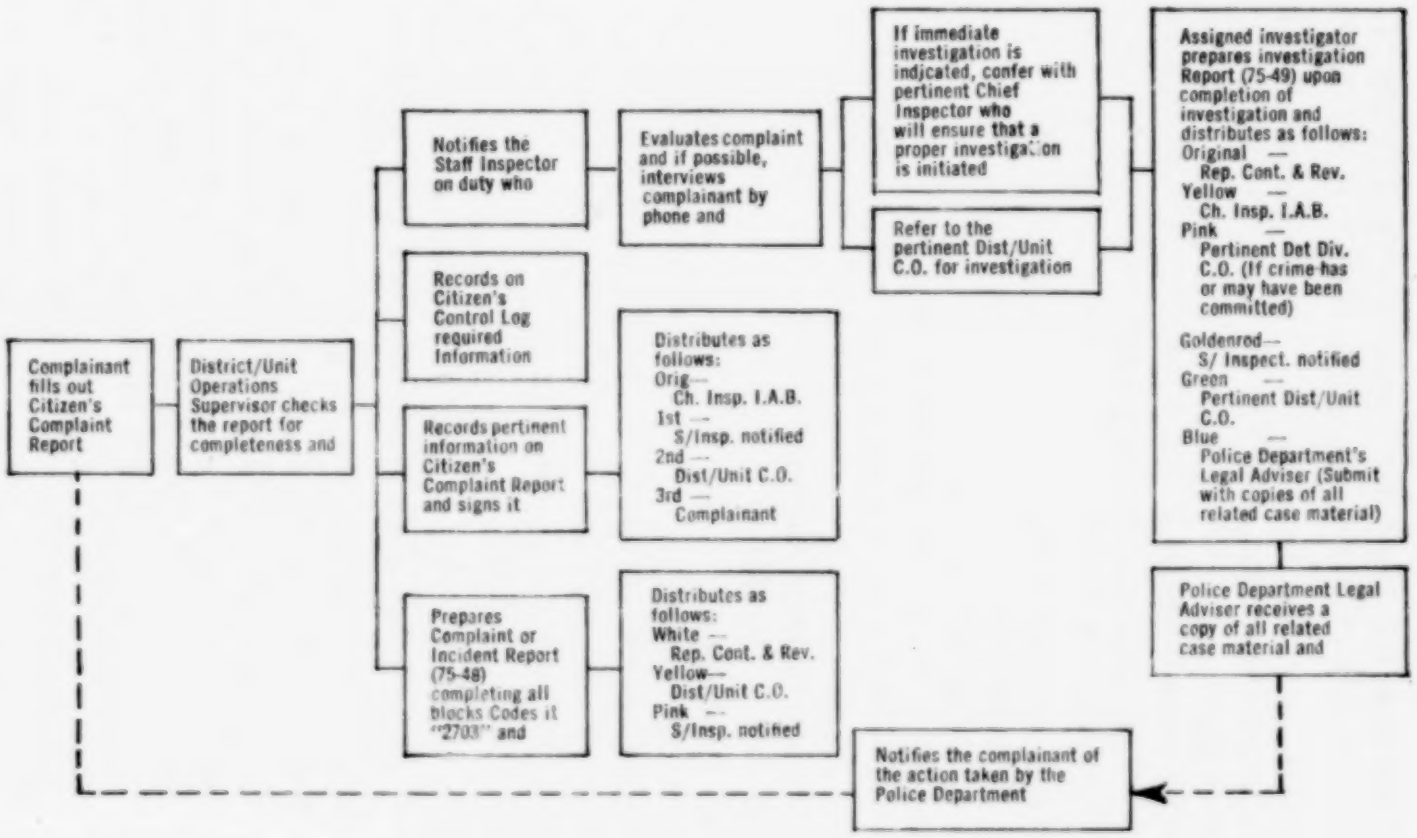
Signature of complainant | Date

Staff inspector notified | Date and Time Notified

Signature of officer receiving complaint

CITIZEN'S COMPLAINT CONTROL LOG (Type or Print—Use Ball Point Pen)			City of Philadelphia POLICE DEPARTMENT		DISTRICT/UNIT
Report Number	DC Number	Complainant's Name and Address	Date & Time Received	Received By:	Staff Inspector Notified

REPORT NUMBERS MUST BE IN CHRONOLOGICAL ORDER—VOIDED NUMBERS MUST BE FULLY EXPLAINED—ALL VOIDED REPORTS MUST BE SENT INTACT TO INTERNAL AFFAIRS BUREAU.



Letter

LETTER OF DISTRICT COURT TO COUNSEL, DATED SEPTEMBER 27, 1973

September 27, 1973

JOHN M. MCNALLY, JR., ESQ.
First Deputy City Solicitor
Law Department
City of Philadelphia
15th Floor, Municipal Services Bldg.
Philadelphia, Pa. 19107

MURRAY GOLDMAN, ESQ.
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PETER HEARN, ESQ.
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Philadelphia, Pa. 19109

HARRY LORE, ESQ.
1420 Walnut Street
Philadelphia, Pa. 19102

WILLIAM L. AKERS, ESQ.
805 One E. Penn Square Bldg.
Philadelphia, Pa. 19107

Re: *COPPAR* v. *Tate, et al.*—No. 70-2430
Goode, et al. v. *Tate, et al.*—No. 70-491

Gentlemen:

I enclose herewith a draft of amendments which reflect the decision of this Court with regard to the form of the final judgment and Directive No. 127. It is requested that plaintiffs' counsel incorporate these changes and submit the completed documents to me for signature.

Very truly yours,

JOHN P. FULLAM

Proposed Amendments

PROPOSED AMENDMENTS TO DIRECTIVE No. 127

Amend paragraph I(B) to reflect that copies of the directive and of the complaint forms in the Spanish language shall also be made available at appropriate locations.

Amend paragraph IV(B) to read as follows:

"Upon receipt of the citizen's complaint report, the Chief Inspector, Internal Affairs Bureau, shall immediately assign a member of his staff who shall have responsibility for the investigation of the alleged incident. All such investigations shall be initiated by, and insofar as practicable carried out by, the staff of the Internal Affairs Bureau. The staff of the Internal Affairs Bureau shall have direct responsibility for all investigations. No such complaint shall be referred for investigation to the commanding officer of the police officer against whom the complaint is lodged, or to any other officer of the same command."

Amend paragraph VIII(C)(3) and (4) by deleting the last clause of subsection 3 ("and shall set forth the procedure stated herein below . . .") and by deleting subsection 4 in its entirety.

PROSPOSED AMENDMENTS TO THE FINAL JUDGMENT

Amend paragraph 3 of the final judgment to read as follows:

"3. Civilian complaints of police misconduct which have been received by the Philadelphia Police Department on or after March 14, 1973, and which have not

heretofore been finally disposed of, and all such complaints which may be received between the present date and the date on which an approved Citizen's Complaint Report form is promulgated in accordance with paragraph 2 of this Order, shall be processed in accordance with the procedures attached hereto, notwithstanding the initial unavailability of the official Citizen's Complaint Report form. Any such complaint which has been received since March 14, 1973, and which has heretofore been disposed of shall, upon written request of the complainant made within thirty days after the date on which the official Citizen's Complaint Report forms are available, be reprocessed in accordance with the procedures attached; and appropriate notices shall be posted (at the locations where the complaint forms are made available pursuant to this Order) giving notice of this right."

Amend paragraph 5 to read as follows:

"5. Within sixty days from the date of this Order, the defendants shall file with the Court and serve upon plaintiffs a certification of compliance with the provisions of this Order."

Add the following paragraph No. 6:

"6. The defendants shall maintain adequate statistical records, and annual summaries thereof, to provide an adequate basis for evaluation of the program for handling civilian complaints."

Add the following paragraph No. 7:

"7. This Court reserves jurisdiction to modify this Order and the attached procedures, and to grant such further relief as may be appropriate, upon the application of any party in interest."

MEMORANDUM, OCTOBER 5, 1973

FULLAM, *J.* October 5, 1973

On March 14, 1973, I entered Findings of Fact and filed an Opinion, applicable to both of the above cases, and entered Orders in each case, the effect of which was to require the defendants to formulate and submit to this Court revised procedures for handling civilian complaints against police officers, and to revise police training and instructional manuals, for the purpose of minimizing violations of the constitutional rights of citizens. The required submissions were made, and various conferences have been held, at which the views of all counsel were fully presented. Concurrently with the filing of this Memorandum, I am entering in each case a "final judgment," the principal features of which appear to be reasonably acceptable to the parties.

The issues to be resolved in this Memorandum relate to counsel fees, expenses and costs. Plaintiffs in the *Goode* case seek an award of counsel fees in the sum of $45,000, plus costs and disbursements in the sum of $4,167.58. Plaintiffs in the *COPPAR* case seek an award of $38,250, plus $300 in expenses.

I am satisfied that, in both cases, the Court's discretion should be exercised in favor of an award of counsel fees and expenses. The cases were brought for the vindication of constitutional rights, significant violations were established, and the plaintiffs succeeded in obtaining relief which should prove beneficial to all of the citizens of Philadelphia. The difficult question concerns the appropriate amount to be awarded.

Until the entry of this Court's Opinion and Order of March 14, 1973, the two cases were processed independently. The *COPPAR* plaintiffs sought sweeping injunc-

tive relief (including the appointment of a "receiver" for the Police Department), as well as damages; the *Goode* plaintiffs concentrated primarily upon obtaining improvements in the procedures for handling civilian complaints against police officers. Although both sets of plaintiffs were purporting to act on behalf of essentially the same class of plaintiffs, they proceeded independently, with different goals in mind, and with different theories as to the best way to present their respective cases. The defendants were essentially the same in both cases, and were represented throughout by the same counsel.

The defendants now assert, among other things, that the efforts of counsel were unnecessarily duplicative, and that their fees should be reduced accordingly. However, the defendants never made any attempt to obtain a consolidation of the two cases (notwithstanding occasional suggestions from the Court to that effect). Moreover, except for some duplication in argument, it appears likely that approximately the same amount of lawyer time would have been involved in any event. That is to say, there was little or no duplication in the evidence presented, or in the discovery and marshalling of evidence and pretrial preparation.

The defendants contend that counsel fees should not be awarded, or, if awarded, should be minimal: because the litigation did not achieve results as drastic as originally sought by the plaintiffs; because relief equivalent to what this Court actually granted could have been achieved at an early stage in the litigation by amicable settlement; and because many of the improvements in police routines which the plaintiffs sought were brought about by reason of a consent decree to which the defendants submitted in another lawsuit before a different judge. There is some merit in these arguments, but not much.

When the end result of this litigation is compared with the relief originally sought by the plaintiffs, it is apparent that the *Goode* plaintiffs achieved a greater degree of success than did the *COPPAR* plaintiffs. But the efforts of both sets of lawyers contributed substantially to the results which have been achieved. The *Goode* plaintiffs focused upon a small number of specific instances to establish the need for relief, and presented extensive evidence and argument in order to demonstrate the inadequacies of existing police procedures. The *COPPAR* plaintiffs, on the other hand, presented much more extensive evidence of specific instances of violations of constitutional rights, but relatively little which was helpful on the issue of the precise form of relief to be granted. This Court's determination that relief in some form should be granted was based to a significant degree upon the extensiveness of constitutional violations, as revealed by the *COPPAR* evidence.

Having participated actively, throughout this litigation, in various attempts to achieve an amicable settlement, this Court is in a position to evaluate the defendants' contention that most of the litigation was unnecessary. The case was vigorously contested throughout. While both sides in the *Goode* case expressed a willingness to resolve the litigation by the adoption and promulgation of revised police procedures, they never came close to agreeing upon what the changes should be. Even after this Court's Order of March 14, 1973, setting forth suggested guidelines, the parties were unable to reach agreement; and the terms of the final judgment entered by this Court differ in several important respects from the terms suggested by the defendants. In short, I am satisfied that the results achieved in this litigation would not have occurred through voluntary action on the part of the defendants, without the need for litigation.

It is correct that, as noted in my Opinion of March 14, 1973, the terms of the consent decree in the case of *Alexander* v. *Rizzo* (C.A. No. 70-992) entered on December 18, 1972, made it unnecessary for this Court to consider certain aspects of the relief sought by the plaintiffs in the present cases. It may well be that, if the pendency of the *Alexander* litigation had been brought to the attention of this Court, or plaintiffs' counsel, some reduction in the labors of counsel in the present cases might have been achieved. But, just as defense counsel made no attempt to achieve consolidation and possible conservation of legal efforts in the present cases, they never saw fit to bring the *Alexander* case to light, and I was not aware of it until after the consent decree was entered. In short, the most that can be said is that the defendants and their counsel in the present cases may have had an opportunity to reduce the amount of legal work which was necessary on behalf of the plaintiffs in the present cases, but failed to do so.

Turning now to the specifics of the requests for counsel fees: Counsel for the *Goode* plaintiffs have filed a comprehensive affidavit setting forth in detail the services performed and the time consumed in its performance. They claim compensation at the rate of $45 per hour. The defendants have filed a counter-affidavit, agreeing that $45 per hour is a reasonable rate, and neither admitting nor denying the amount of time spent (1,052.5 hours). In the course of a conference in chambers, both sides expressed the view that no hearing would be required, and that the Court could properly dispose of the issue on the basis of the affidavits submitted. It further appeared that, although not in a position to concede the accuracy of plaintiffs' counsel's time records, defense counsel had no reason to doubt their accuracy and, if a hearing were held, would not challenge them. Under these circumstances, I have concluded

that a hearing would be a useless formality, and that proof of the amount of time spent is adequately supplied on the record by the affidavit of plaintiffs' counsel.

I am therefore satisfied that, if the defendants should bear the full cost of plaintiffs' counsel fees, $45,000 would be a reasonable allowance for the services rendered.

In the *COPPAR* case, counsel have itemized the number of days of trial, the estimated amount of time spent in preparation for trial, and various other specified legal services; have computed the minimum charge for such services under the fee bill of the Philadelphia Bar Association; and have concluded that their services in this litigation, in view of its nature, importance, and complexity, should be compensated at a rate equal to double the minimum fee. I have concluded that certain discounts should be applied to the estimates submitted. While it is difficult to quantify these discounts, I have concluded that the following factors should be taken into account: (a) The same amount of work should have been done in somewhat less time than counsel apparently actually spent; (b) A considerable amount of work appears to have been devoted to objectives tangential to the actual issues involved in the litigation; and (c) no justification has been shown for evaluating counsel's services at double the suggested minimum rate. I have concluded that, if the defendants were to pay the full amount of plaintiffs' counsel fees to date in the *COPPAR* case, $20,000 would represent a reasonable amount for such services

The next question is whether the defendants should be required to pay the full amount of plaintiffs' counsel fees. As discussed at length in my Opinion of March 14, 1973, the evidence in this case disclosed no conscious policy of permitting or encouraging widespread violations of constitutional rights by police officers, and no basis for concluding that a majority of police officers commit such violations.

Nevertheless, the evidence did disclose that such violations have been occurring with unacceptable frequency, and that existing police procedures are inadequate to prevent such violations. Plaintiffs' counsel have performed a valuable public service in pursuing this litigation, but punitive of less than the full amount of plaintiffs' counsel fees is measures are not called for. I have concluded that awards appropriate in these cases. Here again, I believe it necessary to draw distinctions between the two cases. The *Goode* plaintiffs were more nearly successful, and their efforts were more directly devoted to attempting to obtain a rational solution to the problem. In the *COPPAR* case, plaintiffs were less successful, and somewhat less sensitive to the true public interest. Moreover, the defendants are less chargeable with failure to settle the *COPPAR* litigation, since it is apparent that no amicable settlement along the lines ultimately specified by this Court would ever have been acceptable to these plaintiffs.

Giving due weight to all of the factors discussed above, I have concluded that plaintiffs in the *Goode* case should be awarded counsel fees in the total sum of $25,000, plus costs and disbursements in the sum of $4,167.58; and that plaintiffs in the *COPPAR* case should be awarded counsel fees in the total sum of $10,000, plus costs and disbursements in the sum of $250 (calculated on the basis of the amount claimed, deducting an item of $50 for briefs, findings of fact and conclusions of law). Jurisdiction will be reserved over the question of counsel fees in connection with the individual damage claims in the *COPPAR* case. In addition, of course, plaintiffs in both cases are free to seek further awards in the event further proceedings become necessary.

ORDER, OCTOBER 5, 1973

And Now, this 5th day of October, 1973, it is ORDERED:

1. That the defendants shall pay to the plaintiffs in the *Goode* case, Civil Action No. 70-491, counsel fees in the sum of $25,000, plus disbursements and costs in the sum of $4,167.58.

2. That the defendants shall pay to the plaintiffs in the *COPPAR* case, Civil Action No. 70-2430, counsel fees in the sum of $10,000, plus disbursements and costs in the sum of $250.

3. That the foregoing Memorandum and this Order shall be filed of record in both cases.

John P. Fullam

J.

MEMORANDUM, DECEMBER 18, 1973

FULLAM, *J.* December 18, 1973

On March 14, 1973, this Court entered an Order requiring the defendants "to submit to this Court for its approval a comprehensive program for improving the handling of citizen complaints alleging police misconduct, in conformity with the views expressed in the Opinion of this Court filed this date." Pursuant to that Order, the defendants submitted certain proposals, the plaintiffs submitted counter-proposals, the parties negotiated, and various conferences were held with the Court. The result was the entry of a Final Judgment, on October 5, 1973, embodying all of the provisions as to which the parties were in agreement, and resolving the various items as to which the parties had been unable to agree.

The October 5 Judgment requires the Police Commissioner of the City of Philadelphia to promulgate certain directives for the receipt, investigation and disposition of civilian complaints of police misconduct, substantially in the form set forth in Appendix A attached to the Final Judgment; orders the Philadelphia Police Department to promulgate and make available a form for the lodging of civilian complaints against police, within 15 days (*i.e.*, by October 22, 1973); provides for the handling of complaints which had been received during the interval between May 14, 1973 and October 22, 1973; and requires the Police Department to file with the Court, within 30 days (*i.e.*, by November 5, 1973) its proposed manual for training police recruits in the subject areas discussed in the March 14 Opinion.

On November 27, 1973, the plaintiffs filed a "Motion to Enforce Final Judgment," alleging that the defendants had failed to comply with any of the provisions of the Final Judgment. On the same date, the defendants filed a Motion

for a stay of the October 5 Judgment. This Motion, filed after the defendants had received notice of plaintiffs' Motion for Enforcement, asserts that, on October 25, 1973, the defendants filed notice of appeal from the October 5 Judgment. The defendants seek a stay pending final disposition of the appeal.

The principal thrust of the Motion for stay is addressed to the unfortunate delays which have already occurred in the disposition of this litigation. The Motion asserts "an examination of the docket entries of these cases indicate that neither the Court nor any counsel for any party felt that these cases were of such a nature that a prompt and immediate decision was necessary to do justice" and that "since time has not been deemed essential by anyone in the conduct of this litigation to date . . ." it would be unfair and unreasonable to refuse the requested stay. I find these averments puzzling, and totally inadequate to justify the stay requested.

By referring only to the docket entries, counsel is able to ignore the numerous negotiations, conferences and consultations which have characterized this litigation throughout its history. It is undoubtedly correct, as this Court acknowledged in its March 14, 1973 Opinion, that the decision rendered on that date was unduly delayed, for reasons which, for the most part, were not attributable to the parties or their counsel. But the earlier grant of partial preliminary relief, standing alone, would seem to negate the assertions in the present Motion. Moreover, it can scarcely be suggested that the defendants and their counsel bear no responsibility for the delays which have ensued since March 14, 1973, or that these delays are attributable to the Court.

In short, the grounds alleged in the defendants' Motion are plainly insufficient to support granting a stay of the October 5 Judgment. The question remains, however, in

view of the nature of the litigation, and particularly in view of the plaintiffs' pending Motion for Enforcement, whether a stay should be granted for other reasons.

At various times during the course of this litigation, virtually all of the succession of attorneys who have represented the defendants' interests have expressed their willingness to explore possible changes in the method of handling civilian complaints. Indeed, in their opposition to the award of counsel fees in these cases, the City defendants have recently insisted that the form of relief contemplated by the March 14, 1973 Order did not go beyond what the defendants had always been willing to accept. And it is fair to state that, while the October 5 form of Final Judgment may include some features found objectionable by the defendants, the resolution of all of the disputed items was more nearly in accord with the defendants' position than with the plaintiffs' position.

This does not mean, of course, that the October 5 judgment is in reality a consent decree. The defendants have consistently taken the position that they reserved the right to object to the grant of any relief, and that they would make a final decision as to whether or not to appeal, only after the precise form of the Final Judgment was determined.

It must be remembered that the revision in police procedures contemplated by the October 5 Order, and forecast by the March 14 Opinion and Order, represent an experimental minimum step for the prevention of recurring constitutional violations. Any further delay in the cooperative implementation of this minimal remedy might well create the necessity for very different kinds of relief.

I have concluded that the harm which would be caused by further delay in the remedial measures in question would greatly outweigh any harm which might flow from interim implementation of these measures even if the defendants' appeal is successful. In point of fact, the defendants have not suggested that there would be any harm at all if the stay is denied.

The stay will be denied, and the plaintiffs' Motion for Enforcement will be granted.

ORDER

AND NOW, this 18th day of December, 1973, it is ORDERED that the defendants' Motion for a Stay of the Final Judgment entered October 5, 1973 is DENIED. Plaintiffs' Motion for enforcement of the Final Judgment in these cases is GRANTED, effective five (5) days from and after the date of this Order.

JOHN P. FULLAM

J.

Petition

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
NOS. 73-2024/5 & 73-2077/8
GERALD G. GOODE, et al.,
Appellees

v.

FRANK L. RIZZO, et al.,
Appellants

COUNCIL OF ORGANIZATIONS ON PHILADELPHIA POLICE ACCOUNTABILITY, etc., et al.,
Appellees

v.

HONORABLE JAMES H. J. TATE, FRANK L. RIZZO, et al.,
Appellants

SUR PETITION FOR REHEARING

Present: SEITZ, *Chief Judge*, STALEY, VAN DUSEN, ALDISERT, GIBBONS, ROSENN, HUNTER, WEIS and GARTH, *Circuit Judges*.

The petition for rehearing filed by
Defendant-Appellants

in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

JOSEPH WEIS, JR.
Judge

Dated: December 6, 1974

Judge Adams took no part in the consideration or decision of this petition.

Order

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION No. 70-2430

COUNCIL OF ORGANIZATIONS ON PHILADELPHIA POLICE ACCOUNTABILITY AND RESPONSIBILITY, et al.

v.

JAMES H. J. TATE, et al.

CIVIL ACTION No. 70-491

GERALD G. GOODE, et al.

v.

JAMES H. J. TATE, et al.

ORDER

On March 14, 1973, I directed the parties to submit proposals for implementing the changes in procedure for instructing police officers and for handling civilian complaints against the Philadelphia police, in accordance with the guidelines outlined in the Opinion filed on that date. The parties thereafter complied with that Order. Unfortunately, it now appears that certain of these submissions, although filed in chambers, were never docketed in the Clerk's office. All proposals were submitted without prejudice.

At the request of the parties, and in order to complete the record (now on appeal before the Supreme Court), it is ORDERED that the attached documents, viz:

Letter, John McNally, Esq., dated April 12, 1973, with enclosures (Draft of "Directive 127" and attachments)

Letter, Peter Hearn, Esq., dated April 24, 1973, with enclosures

Order

Letter of this Court to counsel, dated September 27, 1973, with enclosure

shall be docketed, *nunc pro tunc,* as of their respective dates.

It is further ORDERED that the submissions by the defendants were and are WITHOUT PREJUDICE to the defendants' position that the Order of March 14, 1973, as well as the Final Decree in these cases, were and are invalid.

May 7, 1975

JOHN P. FULLAM

J.

Supreme Court, U. S.
FILED
FEB 28 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1974.

No. 74-942.

FRANK L. RIZZO, et al.,

Petitioners,

v.

GERALD G. GOODE, et al.,

Respondents.

HONORABLE JAMES H. J. TATE,
FRANK L. RIZZO, et al.,

Petitioners,

v.

COUNCIL OF ORGANIZATIONS ON PHILADELPHIA POLICE ACCOUNTABILITY AND RESPONSIBILITY, et al.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974.

No. 74-942.

FRANK L. RIZZO, ET AL.,
Petitioners,

v.

GERALD G. GOODE, ET AL.,
Respondents.

HONORABLE JAMES H. J. TATE,
FRANK L. RIZZO, ET AL.,
Petitioners,

v.

COUNCIL OF ORGANIZATIONS ON
PHILADELPHIA POLICE ACCOUNTABILITY
AND RESPONSIBILITY, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION.

OPINIONS BELOW.

The opinion of the United States District Court for the Eastern District of Pennsylvania is reported at 357 F. Supp. 1289 (1973). The Final Judgment of the District Court has not been reported and is set forth in the Appendix of the Petition (App. 20a-37a). The opinion of the United States Court of Appeals for the Third Circuit (App. 1a-19a) is reported at 506 F. 2d 542 (1974).

COUNTER-STATEMENT OF THE QUESTION PRESENTED.

Whether court-ordered revision of police disciplinary procedures for the purpose of reducing what the court found were recurring and otherwise predictable patterns of police violation of constitutional rights was an abuse of federal injunctive power, where the trial record compellingly demonstrated the need for such equitable relief and the relief granted was co-extensive with the need found to exist.

COUNTER-STATEMENT OF THE CASE.

Respondents (hereinafter "plaintiffs" brought these separate but related civil rights actions[1] requesting that plaintiffs' class, consisting of the residents of the City of Philadelphia, be granted appropriate injunctive, declaratory and other equitable relief from the violation of their

1. The two actions were brought and proceeded separately before the same District Court judge who consolidated the cases for final disposition. 357 F. Supp. at 1290. The Court of Appeals also treated the litigation as unitary. 506 F. 2d at 544 (App. 4a-5a). (All references to the opinion of the Court of Appeals will be to both the reported decision and the Appendix.)

constitutional rights by petitioners (hereinafter "defendants"). Plaintiffs produced evidence of a pattern of violations of federally secured rights of citizens by Philadelphia police, particularly as regards arrest for investigation, excessive use of force in response to actual or purported assaults upon policemen, unprovoked use of excessive force and mistreatment of people who question or criticize police activity in particular instances. 357 F. Supp. at 1318. Based on a record both voluminous and complex, 357 F. Supp. at 1291, the District Court, in an opinion by the Honorable John P. Fullam, concluded that violations of rights take place with such frequency that "they cannot be dismissed as rare, isolated instances; and that little or nothing is done by the city authorities to punish such infractions, or to prevent their recurrence." 357 F. Supp. at 1319.

The District Court evaluated the existing police procedures for processing and adjudicating citizen complaints and for enforcing police discipline and found they were "totally inadequate" to prevent violations of citizens' rights in that: (1) the procedures were geared to handle infractions to police regulations but were not framed to cover violations of citizens' constitutional rights; (2) complaints were handled on a "chain of command" basis which discouraged fair handling of civilian complaints; (3) there was no adequate opportunity for the complainant to present his case to an objective tribunal; (4) the outcome of the proceedings were not disclosed; and (5) there was a tendency to minimize consequences of proven police misconduct. 357 F. Supp. at 1292-1293; 1318. As one predicate for relief, the District Court found that:

> "It is the *policy* of the department to discourage the filing of such complaints, to avoid or minimize the consequences of proven police misconduct, and to re-

sist disclosure of the final disposition of such complaints." 357 F. Supp. at 1318 (emphasis added).

The District Court emphasized that it had not decided that plaintiffs and their class have a constitutional right to improved departmental procedures for handling civilian complaints against police. Rather, the Court found that

> ". . . under existing circumstances, violations of constitutional rights by police do occur in an unacceptably high number of instances; that, in the absence of change in procedures, such violations are likely to continue to occur; and that revision of procedures for handling civilian complaints is a necessary first step in attempting to prevent future abuses." 357 F. Supp. at 1321.

The District Court entered an Order requiring defendants

> "to submit to this Court for its approval a comprehensive program for improving the handling of citizen complaints alleging police misconduct, in conformity with the views expressed in the Opinion of this Court filed this date." 357 F. Supp. at 1322.

In accordance with this Order, defendants submitted proposals, plaintiffs submitted counter-proposals and various conferences were held with the District Court. The result was the entry over defendants' opposition of a Final Judgment on October 5, 1973 which required defendants to revise procedures for handling citizen complaints against police officers including such matters as: (1) preparing and distributing appropriate forms for the submission of complaints; (2) prompt and adequate investigation; (3) adjudication by an impartial body insulated from command

pressures; and (4) fair opportunity for both complainants and police officers to present their case, followed by notification to the parties of the outcome. (App. 20a-37a). The relief ordered tracked the deficiencies in the present system which the District Court found to exist. As is more fully set forth below, the scope of this relief was clearly consistent with the scope of the problem it was intended to remedy and was clearly cognizant of the presence or absence of effective alternative forms of relief.

On November 1, 1974, the Court of Appeals for the Third Circuit, in an opinion by the Honorable Joseph F. Weis, Jr., affirmed the District Court's grant of injunctive relief. The Court of Appeals concluded that "there was an adequate evidentiary record to support the findings of the district court that violations of constitutional rights by the Philadelphia police occurred in an unacceptably high number of instances and that in the absence of change in procedures such violations are likely to recur." 506 F. 2d at 547 (App. at 10a-11a). The Court of Appeals approved the relief ordered by the District Court, noting:

> "The district court's order granting relief is limited and moderate in tone indicating its faith in the ability and willingness of the police department to investigate and correct the transgressions of its errant members. Despite the assertions of the defendants, the court is not thrusting itself into the day to day operations of the police department—a situation which we agree would be inadvisible and inappropriate in the circumstances of this case. *Cf. Lankford v. Gelston*, 364 F. 2d 197 (4th Cir. 1966). Indeed, the procedures which the district court required be implemented by the police department for the receipt, investigation, and disposition of civilian complaints are fully in accord with the American Bar Association Standards Relating

to the Urban Police Function, which were unanimously approved by the Executive Committee of the International Chiefs of Police in December, 1972." 506 F. 2d at 547-548 (App. 11a-12a).

Defendants' petition for rehearing was denied by the Court of Appeals *en banc* on December 6, 1974. On February 6, 1975, Mr. Justice Brennan denied defendants' application for a stay of the judgment of the Court of Appeals.

REASONS FOR DENYING THE PETITION.

Both the District Court and the Court of Appeals concluded that violations of the constitutional rights of Philadelphia citizens by police occurred in an unacceptably high number of instances and that in the absence of the ordered equitable relief "such violations are likely to continue to occur." 357 F. Supp. at 1321; 506 F. 2d at 547 (App. at 10a-11a). Defendants in their Petition for a Writ of Certiorari do not contest the validity of this conclusion reached by the courts which have fully reviewed the voluminous and complex record in these cases. Defendants in essence concede that there are recurring and otherwise predictable violations of the constitutional rights of Philadelphia citizens and they do not take issue with the finding that the ordered relief will work to lessen future police abuses.

Rather, the limited basis on which defendants seek review in this Court is their contention that the relief ordered constitutes an abuse of injunctive power in that its implementation will thrust the court into the day to day operations of the Police Department and adequate legal remedies exist. The courts below have specifically rejected defendants' contention. 357 F. Supp. at 1319-1321; 506 F. 2d at 546-548 (App. 8a-12a). The relief ordered by the District Court and approved by the Court of Appeals was clearly consistent with both prior decisions of this Court and the problem to be remedied. The issue presented does not warrant review by this Court.

I. The Relief Granted Was in Accord With Prior Decisions of This Court.

Injunctive relief has traditionally been viewed as a proper remedy in cases presenting unconstitutional police activity. *Hague v. C. I. O.*, 307 U. S. 496; ***Lewis v. Kugler***,

446 F. 2d 1343 (3d Cir. 1971); *Lankford v. Gelston,* 364 F. 2d 197 (4th Cir. 1966) (*en banc*). Just last term, this Court specifically held that "a persistent pattern of police misconduct" is an ample predicate for federal injunctive relief. *Allee v. Medrano,* 416 U. S. 802, 815.

Courts have wide discretion to tailor an injunctive decree to a particular factual situation so as to secure, as expeditiously and effectively as possible, the vindication of constitutional rights. *See, e.g., Swann v. Charlotte-Mecklenburg Bd. of Ed.,* 402 U. S. 1, 15; *Griffin v. County School Board of Prince Edward County,* 377 U. S. 218; *Alexander v. Holmes County Board of Education,* 396 U. S. 19; and the reapportionment cases, e.g., *Baker v. Carr,* 369 U. S. 186; *Reynolds v. Sims,* 377 U. S. 533.[2] In *Allee v. Medrano, supra,* this Court cited with approval the lower court decision in *Wolin v. Port of New York Authority,* 392 F. 2d 83 (2d Cir. 1968) *cert. denied,* 393 U. S. 940 which required defendants to submit for court approval internal administrative directives to cure the enforcement abuses found by the court to exist. 416 U. S. at 816, n. 9.

Indeed the form of relief questioned by defendants has been considered by commentators and members of this Court as appropriate and effective relief for tolerated police misconduct.

2. In the antitrust area, for example, it is firmly established that district courts have the power to grant relief appropriate to the factual situation. In construing Section 4 of the Sherman Act, 15 U. S. C. § 4, which gives the federal courts power to enjoin antitrust violations, the Court has held that the "essential consideration [governing remedial injunctive relief] is that the remedy shall be as effective and fair as possible in preventing continued or future violations . . . in light of the facts of the particular case." *United States v. National Lead Co.,* 332 U. S. 319, 335. Remedial power is broader still in civil rights cases, where the federal courts are under statutory mandate to fashion efficient remedies for violations of vital constitutional rights. 42 U. S. C. § 1988; *see Basista v. Weir,* 340 F. 2d 74 (3d Cir. 1965).

"For tolerated constitutional violations, a prohibitory injunction which only ordered high police officials to refrain from unconstitutional conduct would be useless—the problem lies not in what such officials are doing but in what they are *not* doing. Purely prohibitory injunctions would have to be directed against the subordinate policemen who were acting illegally. But courts would be unable to enforce such injunctions unless they were willing to take over the task of disciplining individual policemen. Such an approach would be highly inefficient since the court's only means of enforcing its orders directly against policemen—a contempt proceeding—would be far too cumbersome and heavy-handed to deal effectively with large numbers of alleged violations.

"If the injunction is to have any utility as a remedy for tolerated police abuse, it must require affirmative action by the officials responsible for police conduct." (Emphasis in original; footnote omitted). Comment, *The Federal Injunction as a Remedy for Unconstitutional Police Conduct,* 78 Yale L. J. 143, 147 (1968), quoted with approval in *Allee v. Medrano, supra,* 416 U. S. at 858-859, n. 20 (Burger, C. J., White and Rehnquist, JJ. dissenting).

Defendants' contention that the relief approved by the Court of Appeals is in conflict with prior decisions of this Court is without merit. Neither *Gilligan v. Morgan,* 413 U. S. 1 nor *O'Shea v. Littleton,* 414 U. S. 488, cited by defendants, supports their position.

Gilligan v. Morgan, 413 U. S. 1, grew out of the campus disorders at Kent State University in May, 1970 at which time the Governor of Ohio called the National Guard to the University campus. Plaintiffs, who were students at the

University, alleged that the National Guard had violated their rights of free speech and assembly, had caused the death of several students and that the Guard's actions were without legal justification. Plaintiffs sought injunctive relief restraining the Governor and National Guard from future violations of plaintiffs' rights. Apart from the question of mootness raised by a change in the training and orders of the Guard, the issue before this Court was whether plaintiffs' claims were justiciable in view of the Constitution's express vesting in Congress of the power to organize, arm and discipline the National Guard (formerly the "Militia"). The issue of the separation of powers led this Court to conclude that the claims raised by plaintiffs did not present a justiciable controversy. In that respect, the present case is very different from *Gilligan* for defendants concede that the issue of lack of a justiciable controversy is not present in this case (Petition, p. 18).

Although *Gilligan* did not reach the issue concerning scope of remedy which defendants seek to raise herein, defendants nevertheless contend that *Gilligan* supports their position. However, the relief sought in *Gilligan* provides a sharp contrast with the nature and basis of the relief granted in the present case. Plaintiffs in *Gilligan* requested continuing judicial surveillance of the training, weaponry and orders of the Ohio National Guard. Such surveillance was to include the setting of standards in these areas by the court. Plaintiffs argued that such broad relief was necessary because of an isolated, albeit tragic, incident of alleged violation of students' rights by the National Guard, although there was no evidence of threatened recurrences of such events.

Unlike *Gilligan*, plaintiffs in the present case presented evidence of numerous incidents of police abuses and official toleration of such abuses in the past. Based on the comprehensive record produced, the District Court properly concluded that such abuses will recur in the future in the absence of the ordered equitable relief. Moreover, by establishing a procedure for handling civilian complaints which is to be administered solely by the Police Department, the relief ordered in the present case, unlike the relief sought in *Gilligan*, does not involve the District Court in the supervision of the day to day operation of the Police Department as both courts below specifically concluded. 357 F. Supp. at 1320-1321; 506 F. 2d 547-548 (App. 11a-12a).

O'Shea v. Littleton, 414 U. S. 488, involved a claim that defendants, a magistrate and a state court judge, engaged in illegal bond-setting, sentencing, and jury-fee practices in criminal cases which deprived plaintiffs of their constitutional rights. Although holding that plaintiffs had failed to satisfy the case or controversy requirement of Article III of the Constitution, this Court went on to discuss the basis for equitable relief sought by plaintiffs. Citing the policy set forth in *Younger v. Harris*, 401 U. S. 37 of restraint by federal courts in the issuance of injunctions against state criminal prosecutions, this Court concluded that the relief sought would violate that policy by disrupting the normal course of such state proceedings. The relief sought would permit members of plaintiffs' class who were being prosecuted in the state courts to interrupt such proceedings in order to adjudicate claims of noncompliance by defendants with the federal court order prohibiting certain actions by defendants. Moreover, this Court noted that plaintiffs had numerous remedies at law to challenge future unlawful conduct by defendants such as the right to a substitution of a judge or change or venue, and review on direct appeal or post conviction collateral review.

In the present case, as noted by the Court of Appeals, the relief ordered does not interfere with or involve on-

going state criminal proceedings as in *O'Shea*. 506 F. 2d at 546 (App. 8a). The fact of such ongoing proceedings provided plaintiffs in *O'Shea* with a forum and remedies adequate to redress the alleged violations of their rights. In the present case, on the contrary, the District Court carefully examined existing remedies and specifically found that such remedies were inadequate to protect plaintiffs and the class they represent. 357 F. Supp. at 1319-1320. *See also, Mapp v. Ohio,* 367 U. S. 643, 651-653; *Lewis v. Kugler, supra,* 446 F. 2d at 1350; *Lankford v. Gelston, supra,* 364 F. 2d at 202.

II. The Relief Granted Was Consistent With the Problem to Be Remedied, Was Consistent With the Presence or Absence of Available and Effective Alternatives, and Was Consistent With the Need to Protect the Public Interest Involved.

Based on examination of the voluminous record presented in these cases, the District Court found that there were "recurring and otherwise predictable violations of the constitutional rights of [Philadelphia] citizens" by members of the Philadelphia Police Department. 357 F. Supp. at 1320. The court also found there was official acquiescence in such violations, as reflected in the clear *policy* of the named defendants to do "little or nothing" with regard to their remedy or prevention. 357 F. Supp. at 1319.

The relief ordered by the District Court was clearly consistent with and reflective of the factual findings it had made. The relief approved was predicated upon defendants' presumed ability to control their own internal operating procedures so as to prevent unlawful police acts. This relief was appropriately described by the Court of Appeals as "limited and moderate in tone." 506 F. 2d at 547 (App.

11a). Significantly, at no time, either prior or subsequent to the Final Judgment in this case, did the defendants argue that the suggested or approved administrative directive was in any way cumbersome or difficult of implementation.[3]

The form of relief was the approval of, and order to implement, a system of internal investigation and review of complaints for the protection of Philadelphia citizens. In granting this particular form of relief the trial court clearly did the following: first, as we indicate below, it considered all feasible alternatives to remedy the problem at hand; second, given these alternatives, it selected the option which, based on the record, appeared to offer the greatest promise of effective relief; third, it made provision for evaluation in actual practice of the options selected; and finally, it allowed for possible modification, or the selection of other alternatives, should evaluation demonstrate that the remedy chosen is either too cumbersome on defendants or, on the other hand, ineffective as a remedy for plaintiffs. *Cf. Green v. County School Board of New Kent County,* 391 U. S. 430, 439 (school desegregation decree).

The trial court painstakingly evaluated possible alternatives to the course actually adopted. The most drastic of these—imposition of external civilian control (by appointment of a master or other means as requested by plaintiffs in *COPPAR*)—was rejected, not because the

3. Defendants, who participated in the drafting of the procedures which are embodied in the Final Judgment and who proposed that the relief be framed in the form of a Police Department directive, contend for the first time in their Petition that the relief granted would "severely interfere with the Police Department's primary purpose to prevent and detect crime." (Petition, p. 15). A review of the Final Judgment in no way supports defendants' claim nor is there any support for it in the extensive record of this case. Moreover, the order by its terms is subject to modification should evaluation demonstrate that the remedy chosen is either cumbersome or ineffective.

facts might not ultimately warrant it, but because in the court's view the defendants themselves ought, in the first instance, retain the responsibility for setting their own house in order. 357 F. Supp. at 1320-1321. Likewise, the court declined to issue a broad injunctive prohibition against all police infringements of federally secured rights, a course which might have subjected police officials to contempt adjudications for each such violation and would have given the court a continual monitoring role insofar as contempt proceedings were involved. Likewise, the trial court deferred to the role which the Police Commissioner currently plays in disciplinary matters. 357 F. Supp. at 1321. The opinion was replete with references to the difficult and sensitive nature of police work and characterized the relief granted as a merely "necessary first step" in remedying problem at hand. 357 F. Supp. at 1321. And finally, the manner in which the trial court weighed these respective remedial options is a clear indication that the relief granted, in light of the voluminous record as to official indifference, appeared to the court to offer the greatest promise of effective relief.

We note, as did the court below, that the relief actually granted follows the recommendations of the National Advisory Commission of Criminal Justice Standards and Goals [4] in the area of model standards for police internal control and discipline. Problems of police abuse have been the subject of a great deal of learned commentary (*see* 357

4. The National Advisory Commission on Criminal Justice Standards and Goals was appointed on October 20, 1971, by the Administrator of the Law Enforcement Assistance Administration (LEAA). Membership in the Commission was drawn from the three branches of state and local government, from industry, and from citizens' groups. Commissioners were chosen, in part, for their working experience in the criminal justice area, and included chiefs of police, judges, corrections officials and prosecutors. The Commission's *Report on Police* (U. S. Government Printing Office: #1973, 0-493-564) was published in January, 1973, and included, *inter alia*, the standards to which reference is made.

F. Supp. at 1318 and sources there cited), and in addition to the National Advisory Commission *Report on Police,* have been the subject of concern of two Presidential Commissions. *Report of the National Advisory Commission on Civil Disorders,* (GPO #1968-0-291-729, March 1, 1968); *Report of the President's Commission on Law Enforcement and Administration of Justice,* "The Challenge of Crime in a Free Society," (GPO #1967-0-239-122, 1967).

Crime practiced by law enforcers is a particularly pernicious evil. This evil is of singular importance in that its effect is to reduce public confidence in the mechanisms of justice and to promote reliance upon lawlessness as the only effective remedy. In the compelling, and for that reason often cited, words of Mr. Justice Brandeis:

> "In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously . . . . Crime is contagious. If the Government becomes a law breaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy." *Olmstead v. United States,* 277 U. S. 438, 485 (dissenting opinion).

CONCLUSION.

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974 No. 74-942

FRANK L. RIZZO, et al,
PETITIONERS,
v.
GERALD G. GOODE, et al.,
RESPONDENTS

HONORABLE JAMES H. J. TATE,
FRANK L. RIZZO, et al.,
PETITIONERS,
v.
COUNCIL OF ORGANIZATIONS ON PHILADELPHIA POLICE ACCOUNTABILITY AND RESPONSIBILITY, et al.,
RESPONDENTS

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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The opinion of the United States Court of Appeals for the Third Circuit is reported at 506 F.2d 542 (1974) and appears in the Appendix to the Petition for Certiorari, beginning at page 4a.

The Final Judgment of the United States District Court for the Eastern District of Pennsylvania, dated October 5, 1973, and the Appendix accompanying that judgment has not been reported, appears in the Appendix to the Petition for Certiorari, beginning at page 20a.

The opinion of the United States District Court for the Eastern District of Pennsylvania, filed March 14, 1973, is reported at 357 F. Supp. 1289 (1973) and appears in the Appendix beginning at page 65a.

JURISDICTION

The judgment of the Court of Appeals for the Third Circuit was entered on November 1, 1974. A timely petition for rehearing en banc was filed on November 15, 1974 and denied on December 6, 1974. The Petition for Certiorari was filed on January 30, 1975 and granted on March 31, 1975. This Court's jurisdiction is invoked under 28 U.S.C. Section 1254(1).

QUESTIONS PRESENTED

Is it an abuse of the injunctive power of the federal district courts for a court to assume control of a major aspect of the operations of a municipal police department, require the issuance of its own intra-departmental procedural directives and maintain a continuing judicial surveillance over the department's operations, particularly in the absence of any finding of any unlawful conduct attributable to petitioners?

Is equitable relief precluded where the legal remedies available are not only adequate but are, in many cases, specifically drawn to protect the very interests which the equitable relief seeks to protect?

STATUTORY PROVISIONS INVOLVED

Civil Rights Act of 1871:

42 U.S.C. Section 1983:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen or the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

Philadelphia Home Rule Charter, Adopted by the Electors April 17, 1951:

Section 1-102. Executive and Administrative Power.

(1) The executive and administrative power of the City, as it now exists, shall be exclusively vested in and exercised by a Mayor and such other officers, departments, boards and commissions as are designated and authorized in this charter. The Mayor and other executive or administrative officers shall be elected or appointed as provided in this charter.

Section 3-101. Department Heads. Each department shall have as its head an officer who either personally or by deputy or by duly authorized agent or employee of the department, and subject at all times to the provisions of this charter, shall exercise the powers and perform the duties vested in and imposed upon the department.

The following officers shall be the heads of the departments following their respective titles: . . .

Police Commissioner, of the Police Department; . . .

Section 5-200. Functions. The Police Department shall have the power and its duty shall be to perform the following functions:

(a) Law Enforcement. It shall preserve the public peace, prevent and detect crime, police the streets and highways and enforce traffic statutes, ordinances and regulations relating thereto. The Department shall at all times aid in the administration and enforcement within the City of the statutes of the Commonwealth of Pennsylvania and the ordinances of the City.

(b) Maintenance of the Philadelphia Police. The Department shall train, equip, maintain, supervise and discipline the Philadelphia Police.

(c) Police Signal System. The Department shall operate a police signal system either as a separate system or in conjunction with the fire alarm system of the Fire Department.

STATEMENT OF THE CASE

This case comes to this Honorable Court from a decision of the United States Court of Appeals for the Third Circuit affirming the judgment of the United States District Court for the Eastern District of Pennsylvania. The District Court, by a mandatory injunction, directed the Philadelphia Commissioner of Police to completely revise the Police Department's procedures for the receipt and investigation of civilian complaints against police officers and for disciplining errant police officers.

Two separate cases were filed by different plaintiffs purporting to represent essentially the same class of persons and suing generally the same defendants, i.e., the Mayor and other officials of the City of Philadelphia and its Police Department. These two cases, *Goode, et al.* v. *Rizzo, et al.*, Civil Action No. 70-491 and *Coalition of Organizations On Philadelphia Police Accountability and Responsibility* [*hereinafter COPPAR*], *et al.* v. *Tate, et al.*, Civil Action No. 70-2430, were tried separately to conclusion, but were consolidated by the District Judge for purposes of decision some two years after the *COPPAR* Trial.

GOODE, et al. V. RIZZO, et al.

On February 17, 1970 the *Goode* Plaintiff-respondents [hereinafter plaintiffs] filed their Complaint in this case. Defendant-petitioners [hereinafter defendants] are Frank L. Rizzo, Mayor of the City of Philadelphia, Hillel S. Levinson, Managing Director of the City of Philadelphia, Joseph F. O'Neill, Police Commissioner, and Police Captain William Murphy.[1] The complaint alleged that two

[1] These defendants were substituted by Order of the District Court dated September 11, 1973. The original defendants were former Mayor James H. J. Tate, former Managing Director Fred T. Corleto, former Police Commissioner Frank L. Rizzo, former Deputy Commissioner of Police Robert G. Selfridge, and Captain Murphy.

Philadelphia Police Officers, Anthony DeFazio and John D'Amico, had engaged in the practice of violating the constitutional rights of black citizens of the City of Philadelphia, both on their own accord and in furtherance of an alleged departmental policy to violate the rights of black citizens of the City of Philadelphia [A, 14a]. Plaintiffs also alleged that defendants' procedure for internal review and discipline of police officers was "inadequate". [A, 14a]

By way of relief, plaintiffs sought a mandatory injunction requiring defendants to revise their disciplinary procedures with regard to handling citizen complaints of police misconduct, and plaintiffs also demanded that DeFazio and D'Amico be dismissed from the Police Department. [A, 20a-22a]

Your petitioners moved for dismissal, first under F. R. Civ.P. 12(b)(6) and subsequently pursuant to F.R.Civ.P. 41(b). Your petitioners asserted that Officers DeFazio and D'Amico were indispensible parties whom plaintiffs failed to join; that absent any allegation that the named defendants deprived the plaintiffs of any federally protected right, the named defendants could not be held liable; and that, in any event, the Court had no authority to intrude into the internal administration of the Police Department in the manner sought by plaintiffs.

The District Court denied both Motions to Dismiss, although the Court did ultimately hold that since DeFazio and D'Amico were not parties to this suit, no relief could be directed against them. [A, 125a] 357 F. Supp. at 1318-9.

In essence it was the position of plaintiffs and ultimately of the District Court that there were incidents of police misconduct which called for disciplinary action but where no disciplinary action was taken; and that there were incidents in which the disciplinary action which was

taken was not sufficiently severe. In making its findings of fact, the District Court recounted nine incidents, occuring over a period of three years and nine months (October 3, 1967[2] to June 20, 1970[3]), of alleged misconduct on the part of Officers DeFazio and/or D'Amico. [A, 74a-86a] 357 F. Supp. at 1294-1301. Of these nine incidents, the Court found that on four occasions complaints to the Police Department had been made regarding the officers' conduct. The Court found that the offending officer was disciplined on two occasions;[4] was not disciplined on one occasion[5]; and, on one occasion, the complainant refused to press charges against the offending officer when advised to do so by the police[6].

COPPAR, et al. V. TATE, et al.

The complaint in *COPPAR* v. *Tate* was filed on September 3, 1970, following the most difficult summer for Philadelphians since the City was torn by urban riots in 1964. The tensions of the summer of 1970 culminated in late August when the events directly leading to the *COPPAR* suit occurred.

On August 29, a man walked into a Philadelphia Police Station and shot and killed the desk sergeant, Frank Von Colln. Nearby, on that same evening, another policeman, while sitting in his patrol car, was shot and seriously wounded by a sniper. On August 30, two other policemen were shot and seriously injured when they stopped a suspected stolen car. Adding to the tension

[2] Louis J. Reed incident, [A, 84a-85a] 357 F. Supp. at 1300.

[3] Ballow incident [A, 78a-79a] 357 F. Supp. at 1297.

[4] Louise J. Reed incident, [A, 84a-85a] 357 F. Supp. at 1300. Anti-semitic remarks incident, [A, 85a-86a] 357 F. Supp. at 1300.

[5] Gerald Goode incident, [A, 75a-78a] 357 F. Supp. at 1295-6.

[6] Joseph Reas incident, [A, 83a-84a] 357 F. Supp. at 1299-1300.

produced by these incidents, the Black Panther Party had chosen Philadelphia to be the host City for the "Revolutionary Peoples Constitutional Convention" which was to bring some six thousand advocates of violent and non-violent political revolution into the City. That convention was scheduled to begin on September 4 and continue through September 7.

Members of the Black Panther Party were suspected by the police of being involved in the shootings of the police officers. On August 31, 1970 the police attempted to search various premises used by the Black Panther Party. At one of these premises, the attempt to serve the search warrant was met with gunfire from the persons inside the property. After a brief gunfight with the police, the occupants surrendered, emerged and were stripped searched by the policemen on the scene. None of the occupants were injured.

On September 3, the plaintiff-respondents in *COPPAR* filed the complaint initiating their action together with motions for a preliminary injunction and temporary restraining order. Defendants-petitioners are James H. J. Tate, former Mayor of the City of Philadelphia, Frank L. Rizzo, former Police Commissioner and Fred T. Corleto, former Managing Director. *COPPAR* sought to enjoin defendants from interfering in any way with the then imminent "Revolutionary Peoples Constitutional Convention", even in the event of emergency circumstances, and from holding in custody and prosecuting several of the named plaintiffs. [A, 48a-49a]. *COPPAR* further sought an order appointing a "special master" as "receiver" for the Police Department. [A, 49a-50a].

COPPAR's complaint recounted the August 29 to September 7 events described above; and, in a somewhat repetitive series of averments, COPPAR accused defend-

ant Rizzo of threatening Philadelphia's black community with genocide[7] and averred conclusory generalties accusing the defendants of implementing within the Police Department a policy of intimidation and harrassment towards black persons solely because of their race.

Plaintiffs in this action were COPPAR itself, the Black Panther Party, the Southern Christian Leadership Conference, the Young Lords Party, and twenty-one individuals. On defendants' motion the Black Panther Party and the Young Lords Party were dismissed for failure to comply with discovery orders of the District Court. [A, 125a] 357 F. Supp. at 1319. Of the twenty individual plaintiffs, only one, Mary Rouse presented any testimony. She did not testify as to having personally suffered any harrassment or intimidation at the hands of the Police Department or that any such activity was ever directed against her. Of the group plaintiffs, COPPAR testified in the person of Mary Rouse and Floyd Platten, co-chair persons of that organization. [A, 86a-87a] They likewise did not testify that their organization suffered any harassment or intimidation at the hands of the Police Department. Their testimony consisted of second-hand descriptions of incidents of alleged police misconduct which precipitated complaints to COPPAR. The District Court made no findings of fact regarding these incidents.

The District Court refused to enter the temporary restraining order prayed for, but did issue an order enjoining police officers from violating the constitutional

[7] Typical of these allegations is paragraph 22 [A, 41a] where COPPAR avers:

> That the defendant Rizzo was openly, brazenly and illegally threatened the physical extermination and acts of genocide against the Black Community . . . (sic).

In support of this scandalous matter, COPPAR quoted from a statement regarding the murder of Sergeant VonColln made by an obviously distraught and justifiably angry Police Commissioner.

rights of the plaintiff class, thus enjoining the police from performing their job improperly.

The "Revolutionary Peoples Constitutional Convention" came and went without any serious incidents involving the Police Department or any of the defendants. On September 21, 1970 and January 4, 1971, the defendants filed motions for dismissal asserting that since the convention had passed without incident, the bulk of the lawsuit was moot; that COPPAR otherwise failed to state a cause of action since plaintiffs were not entitled to having their prosecutions enjoined and since a federal district court lacked the power to appoint the requested receiver, and that, excluding those averments mooted by the uneventful convention, the remaining averments were so broad and conclusory as to fail to state a cause of action.[8] The District Court did recognize the prejudice to defendants in attempting to defend the case in which the complaint stated no facts. The Court required COPPAR to file with the Court and to serve upon defendants' counsel memoranda of witnesses and incidents. COPPAR filed several of these memoranda which gave the name and address of a witness and the briefest possible description of some sixty-nine incidents. The memoranda were served on October 8, October 20, November 4 and November 20, during the course of the trial.[9] Both the District Court and the Court of Appeals held that these memoranda were sufficient to obviate the necessity to dismiss the Complaint and could properly

[8] The District Court ultimately conceded, on these last grounds, that the Motion to Dismiss was probably meritorious. [A, 125a] 357 F. Supp. at 1319.

[9] Testimony was taken on September 4, 28; November 2, 4, 5; December 1, 2, 3, 4; January 5, 6, 7 and 19. The partial effect of allowing amendment of the complaint through these memoranda was to prejudice the defense of the case since all sixty incidents had to be investigated during the course of the trial.

be considered to be amendments to the Complaint. [A, 125a; App. to Pet. for Cert., p. 8a], 357 F. Supp. at 1319.

The District Court heard evidence of but twenty-eight of the alleged incidents of police misconduct, the incidents occurring over a year's time.[10] The Court determined that in four incidents,[11] there was no police misconduct. With regard to one incident,[12] the Court was satisfied that defendants had remedied whatever problems had existed. The Court specifically criticized the conduct of police officers in two incidents.[13] In the remaining incidents, the Court made its findings without commenting on the propriety of the conduct of either the citizens or police officers involved.

The trial of the Goode case was completed by November 30, 1970 and the trial of the COPPAR case concluded on March 9, 1971. Approximately two years later, on March 15, 1973, the District Court entered an Opinion and Order for both cases consolidating them for purposes of relief. [A, 65a] 357 F. Supp. at 1290. After reviewing the evidence in both cases, the Court concluded that violations of the legal and constitutional rights of citizens are committed by only a small percentage of police officers, but also that such violations do occur too frequently to be dismissed as rare, isolated instances. [A, 123a] 357 F. Supp. at 1318. The Court also concluded that the evidence did not disclose any departmental

[10] Charles Blackman incident, October 12, 1969 [A, 87a] 357 F. Supp. at 1301 to Irene Thompson incident, October 23, 1970. [A, 119a] 357 F. Supp. at 1317.

[11] Charles Blackman incident, [A, 87a-88a] 357 F. Supp. at 1301; Dennis Holland incident, [A, 98a] 357 F. Supp. at 1289; Adalberto Molinas incident, [A, 99a] 357 F. Supp. at 1306; Fred Brooks incident, [A, 107a] 357 F. Supp. at 1310.

[12] Robert Nicholas incident, [A, 88a] 357 F. Supp. at 1301.

[13] Locke and Perry incident, [A, 107a-109a] 357 F. Supp. at 1310; Brown and Smalley incident, [A, 117a-118a] 357 F. Supp. at 1315.

policy to violate the rights of citizens nor any policy of racial bias or discriminatory enforcement on racial lines. [A, 124a, 126a] 357 F. Supp. at 1318, 1319. The Court concluded that the existing police procedures for handling citizen complaints of police misconduct were "inadequate", [A, 124a] 357 F. Supp. at 1318, but also that the plaintiffs had no constitutional right to have those procedures improved. [A, 130a] 357 F. Supp. at 1321. Based on its finding of inadequacy in the department's procedures,[14] the Court ordered defendants to submit revised procedures. Those procedures were to be in accordance with the views of the Court as expressed in its Opinion.

In accordance with the Court's order, defendants prepared and submitted revised procedures, thereby precipitating counter proposals and a series of settlement discussions which continued until September, 1973. Nevertheless the defendants informed the Court and opposing counsel that they reserved the right to object to the grant of any relief. [A, 190a, 194a] On October 5, 1973 the District Court issued its final judgment [App. to Pet. for Cert. p. 20a] which requires, *inter alia,* that the Police Commissioner promulgate, as an intradepartmental directive, procedures for the receipt, investigation and disposition of civilian complaints of police misconduct. The directive was to be in the form of a sample directive which was appended to the Court's order. [App. to Pet. for Cert., p. 24a et seq.]

[14] Insofar as the COPPAR case was concerned, since defendants were not aware that the Court was going to treat the request for relief in Goode as if it were also made in COPPAR, defendants were not on notice in the COPPAR case that they had to defend their internal disciplinary procedures. Plaintiffs' case and the defense in COPPAR contains little evidence relating to those procedures or to departmental investigations of citizen complaints arising out of any of the incidents alleged in COPPAR. Thus in only six of the twenty-eight incidents set forth in its findings did the Court make any reference to citizen complaints.

A timely appeal was taken from the final judgments in both the *Goode* and *COOPAR* cases as well as from the Order of the Court which granted attorneys' fees in each case. On November 1, 1974 the Third Circuit Court, per the Honorable Joseph F. Weiss, Jr., affirmed the District Court as to the injunctive relief but vacated and remanded the award of counsel fees. Notwithstanding the specific findings of the District Court that only a small percentage of Philadelphia policemen violated the legal and constitutional rights of citizens and that there was no departmental policy of racial bias or to deny citizens their legal and constitutional rights, the Circuit Court held that the District Court's remedy was proper because the District Court also found that incidents of police misconduct on the part of that small percentage of police officers could not be dismissed as rare isolated instances, and that the new procedures had the potential for the prevention of future misconduct. Furthermore the Circuit Court agreed with the District Court that plaintiffs were not entitled to revise procedures as a matter of constitutional right, and recognized that the District Court's procedures were simply the Court's idea of a wiser method of police administration. [App. to Pet. for Cert., p. 12a] Defendant-petitioner filed a timely petition for rehearing which was denied by the Court en banc on December 6, 1974. [A, 192a] On January 30, 1975 defendant-petitioner filed his Petition for Certiorari in this Honorable Court. The petition was granted on March 16, 1975.

SUMMARY OF ARGUMENT

I. The judicial power does not exist to pass judgment upon the wisdom, efficiency or adequacy of administrative procedure nor upon the wisdom or competence of executive administration. *Laird* v. *Tatum,* 408 U.S. 1 (1972); *Mourning* v. *Family Publication Service,* 411 U.S. 356 (1973); *Dandridge* v. *Williams,* 397 U.S. 471 (1970). In the absence of any proof or any finding of any unlawful acts on the part of any petitioner and in the absence of any unconstitutionality in the Police Department's procedures for the receipt, investigation and disposition of citizen complaints of police misconduct, the District Court abused and acted beyond its equitable powers in granting relief. *O'Shea* v. *Littleton,* 414 U.S. 488 (1974); *Gilligan* v. *Morgan,* 413 U.S. 1 (1973); *Hague* v. *C.I.O.,* 307 U.S. 496 (1938). The controversy surrounding the "adequacy" of the Police Department's administrative procedures is non-justiciable. *Gilligan* v. *Morgan,* supra; *Flast* v. *Cohen,* 392 U.S. 83 (1968). The directive which the District Court ordered to be promulgated and implemented is counter-productive to the Department's primary mission to prevent and detect crime, is inimicable to the public interest, and improperly and improvidently inhibits the lawful exercise of the discretion vested in petitioners and in individual police officers. *Scheuer* v. *Rhodes,* 416 U.S. 232 (1974); *Wood* v. *Strickland,* — U.S. —, 43 L. Ed. 2d 214 (1975); *Pierson* v. *Ray,* 386 U.S. 547 (1967).

II. The Courts will hold accountable those persons who violate a plaintiff's constitutional rights, but equitable relief does not lie against public officials to prevent unspecified unconstitutional acts to be perpetrated sometime in the future by persons unknown. *Gilligan* v. *Morgan,* supra; *O'Shea* v. *Littleton,* supra. The federal

and state courts, acting pursuant to federal law, state law and the common law, provide an adequate legal remedy for victims of unlawful or unconstitutional conduct. *O'Shea* v. *Littleton,* supra; *Monroe* v. *Pape,* 365 U.S. 167 (1961). The presence of adequate remedies at law preclude the issuance of injunctive relief. *O'Shea* v. *Littleton,* supra; *Younger* v. *Harris,* 401 U.S. 37 (1971).

ARGUMENT

I. IN ASSUMING CONTROL OVER A MAJOR ASPECT OF THE OPERATIONS OF THE PHILADELPHIA POLICE DEPARTMENT, IN REQUIRING THE ISSUANCE OF ITS OWN INTRA-DEPARTMENTAL PROCEDURAL DIRECTIVES AND IN MAINTAINING A CONTINUING JUDICIAL SURVEILLANCE OVER THE OPERATIONS OF THE DEPARTMENT, THE LOWER COURT ABUSED ITS INJUNCTIVE POWER, PARTICULARLY WHERE THERE WAS NO FINDING OF ANY UNLAWFUL CONDUCT ATTRIBUTABLE TO ANY PETITIONER.

In enacting the Civil Rights Act of 1871, 42 U.S.C. § 1983, Congress created a statutory scheme to provide to persons within the jurisdiction of the United States a means of redress for violations, under color of state law, of the rights, privileges or immunities guaranteed by the Constitution and laws of the United States. *Monroe* v. *Pape,* 365 U.S. 167 (1961). "The Act prescribes two prerequisites to recovery: (1) the conduct complained of must have been done by some person acting under color of law; and (2) such conduct must have subjected the complainant to the deprivation of rights, privileges or immunities secured to him by constitution and laws of the United Sates." *Howell* v. *Cataldi,* 464 F.2d 272, 279 (3rd Cir. 1972), quoting *Basista* v. *Weir,* 340 F.2d 74, 79 (3rd Cir. 1965). In affirming the District Court, the Court of Appeals has taken leave of these fundamental precepts.

The two cases before this Court were brought under the Civil Rights Acts, primarily 42 U.S.C. § 1983, claiming that the defendants had effectuated a departmental policy of racial bias and violation of Constitutional rights secured to the people, [A, 14a, 39a, 41a, 43a-47a]; that

certain police officers, not defendants, had violated the constitutional rights of certain plaintiffs and members of the plaintiff class, [A, 14a-18a; see also COPPAR Memoranda of Witnesses and Incidents]; and that the departmental procedures for internal review of incidents of alleged unconstitutional conduct were inadequate, thus indirectly contributing to the specific acts of unlawful conduct alleged to have occurred. [A, 14a].

The District Court found and reiterated its finding that defendants had established *no* policy of racial bias or of violation of constitutional rights, [A, 124a, 126a] 357 F. Supp. at 1318, 1319. The District Court held that no relief could be entered against the police officers whom it presumably would have held liable for their specific acts of unconstitutional conduct since those officers were not before the Court, [A, 125a] 357 F. Supp. at 1318-1319. The Court found that the procedures for internal police review were "inadequate"; but the Court then held, and the Court of Appeals agreed, that those procedures were *not* unlawful; that plaintiffs had *no* constitutional right to improved procedures. [A, 130a; App. to Pet. for Cert., 12a], 357 F. Supp. 1321;

Concisely stated, plaintiffs failed to prove their case: the District Court refused to hold that defendants' conduct "subjected the complainant[s] to the deprivation of rights, privileges or immunities secured to [them] by the constitution and laws of the United States." *Howell* v. *Cataldi, supra; Basista* v. *Weir, supra.* In entering judgment against defendants, not on the basis of constitutional infirmity, but rather on a theory of administrative inefficiency or inadequacy, the District Court erred. In affirming the District Court's departure from the realm of judicial power, the Court of Appeals erred.

The constitutionally ordained function of the federal courts is to adjudicate competing legal rights in the

context of an actual case or controversy. *Muskrat* v. *United States,* 219 U.S. 346, 361 (1911); *United Public Workers* v. *Mitchell,* 330 U.S. 75, 89 (1947). The judicial power does not include the power to inquire into the wisdom, need, desirability or appropriateness of legislative or executive action. *Laird* v. *Tatum,* 408 U.S. 1, 15 (1972); *Mourning* v. *Family Publications Service,* 411 U.S. 356, 358 (1973); *Dandridge* v. *Williams,* 397 U.S. 471, 486-7 (1970); *Daniel* v. *Family Security Life Insurance Company,* 336 U.S. 220, 224 (1949). Moreover it has long been established in American jurisprudence that "to entitle a private individual to invoke the judicial power to determine the validity of executive action, he must show that he has sustained or is immediately in danger of sustaining a direct injury as a result of the action . . ." (emphasis ours) *Laird* v. *Tatum,* 408 U.S. at 13 quoting *Ex parte Levitt,* 302 U.S. 633, 634 (1937); see also *O'Shea* v. *Littleton,* 414 U.S. 488 (1974).

In *Laird,* plaintiffs sought, as private parties, to initiate a broad investigation, "armed with the subpoena power of a federal district court and the power of cross-examination", into the intelligence gathering activities of the United States Army. 408 U.S. at 414. The Circuit Court of Appeals for the District of Columbia held that plaintiffs had stated a justiciable controversy. In reversing the Court of Appeals, this Court, per Chief Justice Burger, pointed out:

> "Carried to its logical end, this approach would have the federal courts as virtually continuing monitors of the wisdom and soundness of Executive action; . . . [this] is not the role of the judiciary, absent actual present or immediately threatened injury resulting from unlawful government action." 408 U.S. at 15.

Perhaps this doctrine has never been so forcefully stated as by Mr. Justice Frankfurter, dissenting in *Trop* v. *Dulles,* 356 U.S. 86, 120 (1958).

> "Rigorous observance of the difference between limits of power and wise exercise of power—between questions of authority and questions of prudence— requires the most alert appreciation of this decisive but subtle relationship of two concepts that too easily coalesce. No less does it require a disciplined will to adhere to the difference. It is not easy to stand aloof and to allow want of wisdom to prevail, to disregard one's own strongly held view of what is wise in the conduct of affairs. But it is not the business of this Court to pronounce policy. It must observe a fastidious regard for limitations on its own power, and this precludes the Court's giving effect to its own notions of what is wise or politic."

The remedy for inefficient, unwise or incompetent administration of the executive branches of government lies not with the federal courts on the complaint of dissatisfied citizens; rather it lies squarely with the electorate.[15] The bedrock of democracy is that the electors give

[15] By virtue of the May 12, 1970 Order of the District Court permitting these cases to proceed as a class action [A, 24a], plaintiffs purport to represent Philadelphia's residents. It would appear however that this legal representation by virtue of F.R.Civ.P. 23 is divorced from reality. In May, 1967, then Mayor Tate, an original defendant in both Goode and COPPAR, was selected in a primary election as the Democratic Party candidate for mayor over the opposition of the Philadelphia County Democratic organization. In November of that year, the voters elected him Mayor.

The present Mayor, Frank L. Rizzo, an original defendant in both cases as Police Commissioner, won the Democratic mayoral primary in May, 1971 and the general election in November, 1971.

On May 20, 1975 the Democratic voters in Philadelphia will pass judgment on the wisdom and competence of the Rizzo administration in the Democratic primary election. Mayor Rizzo is running against the party organization's candidate for mayoral candidacy. Assuming Mayor Rizzo is successful in the primary, Philadelphia's entire electorate will render their opinion on the Rizzo administration in November, 1975.

their authorization to a person to exercise his discretion, be that person elected to executive, legislative or judicial office. As Mr. Chief Justice John Marshall held in the very case which proclaimed the judiciary's fundamental right to review the unconstitutional actions of coordinate branches of government:

> "The conclusion from this reasoning is, that where the heads of departments are political or confidential agents of the executive, merely to execute the will of the President, or rather to *act in cases in which the executive possesses a constitutional or legal discretion, nothing can be more perfectly clear than that their acts are only politically examinable.*" [emphasis supplied] *Marbury* v. *Madison,* 1 Cranch 137, 166 (1803).

In the cases presently before this Court, judgment was entered against defendants, not because of their liability for injury to plaintiffs, but rather because aspects of their administration of the Police Department did not meet the Court's concepts of wise administration. In both cases, defendants were charged with having and furthering a departmental policy of racial discrimination and unconstitutional conduct [A, 14a, 39a, 41a, 43a-47a], yet defendants were not found to have committed any unlawful acts. In finding that there was neither a policy of racial bias nor a policy to violate the constitutional rights of citizens the District Court expressly exonerated defendants of the alleged unlawful conduct.

In the absence of any evidence of any legal wrong on the part of defendants, the Court considered evidence of transgressions on the part of individual police officers. The Court found that certain police officers had directly injured certain plaintiffs by violating their constitutional rights. However no officer charged by way of testimony

with specific acts of unlawful conduct nor found by the Court to have acted unconstitutionally was ever made a defendant in either case. Thus the very persons who presumably would have been held liable in a properly pleaded action for specific acts in violation of the constitutional rights of certain plaintiffs and members of the plaintiff class were never brought before the Court. Nevertheless the Court entered judgment against defendants who were guilty only of having employed administrative procedures for handling civilian complaints and for disciplining errant police officers which plaintiffs and the Court deemed to be "inadequate"—not illegal, unlawful or unconstitutional. In its efforts to devise a remedy to cure the "inadequate" procedures, the District Court overlooked the most fundamental prerequisite to equitable relief, the existence of legal liability. *Carter* v. *Chief of Police,* 437 F.2d 413 (3rd Cir., 1971).

The Court's refusal to find legal wrongdoing marks a point of departure from virtually every case in which an injunction against police misconduct has been entered or upheld. In *Allee* v. *Medrano,* 416 U.S. 802 (1974), defendants, the Starr County, Texas Justice of the Peace, Sheriff and several deputy sheriffs and certain Texas Rangers were found to have personally used the power of their offices to thwart efforts to unionize Mexican-American farmworkers. Similarly in *Hague* v. *C.I.O.,* 307 U.S. 496 (1938), Mayor Frank "I am the Law" Hague and certain other municipal officers were found to have deliberately used the power of their offices to exclude and remove labor union organizers from Jersey City, New Jersey. In *Lankford* v. *Gelston,* 364 F.2d 197 (4th Cir. 1966), the Court held that an injunction should have issued against warrantless searches of residence based on anonymous tips where the searches "were the effectuation

of a plan conceived by high ranking officials [of the Baltimore Police Department]." 364 F.2d at 197. All of these cases enjoined unconstitutional conduct on findings that the defendants had violated the constitutional rights of the plaintiffs; in none of these cases was the governance of the respective police departments arrogated to the Court.

Aside from abusing its injunctive power in granting relief where defendants were found to *not* have violated anyone's constitutional rights, the District Court compounded its error by entering a mandatory injunction which substantially interferes with the rights and the duties of the Police Commissioner and the executive branch of government in the City of Philadelphia. In affirming this error, the Court of Appeals overlooked the relevant decisions of this Court which require reversal.

In *Hague* v. *C.I.O.,* 307 U.S. 496 (1938), this Court was faced with a factual situation far more severe than is present here. In *Hague,* the district court found that the Mayor, Director of Public Safety, Chief of Police and other municipal officers of Jersey City, New Jersey had embarked upon a deliberate policy of brazenly unconstitutional conduct; that the defendants had adopted and enforced the deliberate policy of running union organizers out of town; that the defendants, acting in their official capacity, had adopted and enforced a deliberate policy of preventing, sometimes violently, the distribution of handbills and circulars by representatives of the CIO; and that defendants had adopted and enforced a deliberate policy of preventing representatives of the CIO from holding assemblies or meetings in the open air and in public places. 307 U.S. at 504, 505. In interfering with the meetings and with the distribution of circulars, the defendant City officials acted pursuant to municipal ordinances

which required a permit prior to any public meeting and which prohibited the distribution of circulars. The district court entered a decree enjoining petitioners from removing plaintiffs from Jersey City, from excluding plaintiffs from entry into Jersey City and from interfering with respondents' free access to public places. Further, the district court declared the ordinances void as unconstitutional, enjoined their enforcement and formulated guidelines for the regulation of those activities which the unconstitutional ordinances had sought to control.

In this Court, the district court's decree enjoining the deliberate unconstitutional conduct on the part of the City officials and the declaratory relief and injunction against the ordinances was affirmed. However this Court vacated that portion of the decree setting forth conditions under which the municipal officials could properly act.

> "The decree attempts to formulate the conditions under which respondents and their sympathizers may distribute such literature free of interference. The ordinance absolutely prohibiting such distribution is void under our decision in *Lovell* v. *Griffin,* 303 U.S. 444, supra, and petitioners so concede. We think the decree goes too far. All respondents are entitled to is a decree declaring the ordinance void and enjoining the petitioners from enforcing it.
>
> Paragraph 4 [of the decree] has to do with public meetings. Although the Court below held the ordinance void, the decree enjoins the petitioners as to the manner in which they shall administer it. There is an initial command that the petitioner shall not place "any previous restraint" upon the respondents in respect of holding meetings, provided they apply for a permit as required by the ordinance. This is followed by an enumeration of the conditions under which a permit may be granted or denied. We think this is wrong. As the ordinance is void, the respondents are entitled to a decree so declaring and an injunction against its enforcement by petitioners. They are free to hold meetings without a permit and without regard to the terms of the void ordinance. *The Courts cannot rewrite the ordinance, as the decree, in effect, does*" [emphasis supplied] 307 U.S. at 518.

Thus though the CIO had pleaded and proven that the municipal officials of Jersey City had deliberately and repeatedly used the power of their offices to deny them their basic constitutional rights to speech, press and assembly, this Court held that they were not entitled to a mandatory injunction designed to prevent future caprice on the part of individual government officials who had convincingly demonstrated their lack of regard for constitutional government. Yet here the District Court did precisely what this Court said in *Hague* the district courts could not do. In choosing to compose and order the issuance of its own procedural directive, the District Court here ignored the very reason for the modification of the *Hague* court's decree.

In *Gilligan* v. *Morgan,* 413 U.S. 1 (1973) this Court again rejected the proposition that the judicial power of mandatory injunction could be used to establish and promulgate standards regulating the exercise of the discretion vested in the executive for administration of the state's police power. Plaintiffs in *Gilligan* sought judicial relief similar in nature to the relief granted by the District Court here; that is, the establishment of standards which would regulate "the training, kind of weapons and scope and kind of orders" controlling the actions of the Ohio National Guard. 413 U.S. at 6. Plaintiffs also sought a

continuing judicial surveillance to assure compliance with the standards to be developed by the Court.[16] In reversing the dismissal of the complaint, the Sixth Circuit Court of Appeals instructed the district court to evaluate plaintiffs' claims, particularly in light of several reports and articles relevant to mob and riot control,[17] and to enter the relief sought if such relief was indicated. On writ of certiorari, this Court reversed and held that the claims presented in the complaint were not justiciable. 413 U.S. at 10. Drawing upon the standards set forth in *Flast* v. *Cohen,* 392 U.S. 83 (1968), Mr. Chief Justice Burger wrote for the Court that there was no justiciable controversy: "(a) 'when the parties are asking for an advisory opinion,' (b) 'when the question sought to be adjudicated has been mooted by subsequent developments,' and (c) 'when there is no standing to maintain the action.'" 413 U.S. at 9-10. These considerations are equally applicable to the instant matter. In ordering the implementation of what it thinks are wiser administrative procedures, in the admitted absence of any unlawful conduct on the part of the defendants and in the admitted absence of any constitutional right to revised procedures in plaintiffs, the opinion and judgment of the District Court can only be described as advisory. Additionally the Court has trampled over the delicate relationship to be preserved between the federal equitable power and

[16] Compare paragraphs 5, 6, and 7 of the final judgment of the District Court wherein the Court implements such a system of judicial surveillance. [App. to Pet. for Cert., 23a]

[17] Here both the District Court and the Circuit Court referred to and relied upon similar outside the record commentary to justify their intrusion into the administration of the Police Department. [A, 123a; App. to Pet. for Cert., 12a]. It is no more likely that from the articles relied upon the Courts below could make a reasoned evaluation of the administrative processes and problems inherent in a major metropolitan police force than it is likely that a district court could make a reasoned judgment regarding the operation of a state national guard from the articles referred to by the Sixth Circuit Court in *Gilligan.*

the state's administration of its own laws and has treaspassed into an area expressly committed to the municipal executive by state statute. Philadelphia Home Rule Charter Sections 1-102; 3-101; 5-200.[18] Additionally the second earmark of a non-justiciable controversy, i.e. mootness, is also present, at least in part, in the instant case. The uneventful passage of the "Revolutionary Peoples Constitutional Convention" mooted the only conceivably controversy in the *COPPAR* case. [A, 61a] Plaintiffs also lack standing to sue for revision of the departmental procedures. It is clear from a reading of the *Goode* complaint that *Laird* v. *Tatum* and the *O'Shea* v. *Littleton* requirements of direct injury resulting from the challenged executive action have not even been alleged, much less proven. As alleged in the complaint, the relationship between the challenged procedures and any injury suffered by any plaintiff or any member of the plaintiff class is indirect and inferential. [A, 14a]

In *O'Shea* v. *Littleton,* supra, this Court again refused to permit the federal courts to use their mandatory injunctive power to supervise the functioning of local government. There plaintiffs alleged that certain county judicial officers had engaged in a pattern and practice of violating the constitutional rights of the plaintiff class. Plaintiffs sought "an injunction aimed at controlling or preventing the occurrence of specific events which might take place in the course of future state criminal trials." 414 U.S. at 500. The district court dismissed the complaint; but the Seventh Circuit Court reversed, ruling that in the event plaintiffs proved their allegations, the district court should "fashion appropriate injunctive relief to prevent petitioners [defendants] from depriving others of their

[18] The Philadelphia Home Rule Charter is a Pennsylvania statute. See *Addison Case,* 182 A.2d 272, 385 Pa. 48 (1961).

constitutional rights in the course of their carrying out their judicial duties in the future." 414 U.S. at 492-3. As is true here, the Seventh Circuit Court disclaimed any intention of requiring the district court to sit in day-to-day supervision of the defendant judicial officers, but suggested that the district court require preiodic reports from defendants on their judicial activities. This Court reversed and held that the complaint was properly dismissed. This Court disapproved of the injunction envisioned by the Circuit Court which would have resulted in "nothing less than an ongoing federal audit of state criminal proceedings," 414 U.S. at 500; it would have run counter to fundamental principles of federalism and unnecessarily and unwisely involved the equitable powers of the federal courts, particularly the power to hold a violator of an injunction order in contempt of court, in the state criminal process. 414 U.S. at 501-2.

As in the case at bar, both *Gilligan* and *O'Shea* involved attempts by class plaintiffs to have the judiciary suspend and supercede the duly ordained powers of state and local government officials, evaluate their performance and frame mandatory injunctive relief in the form of regulations and standards which potentially would have the indirect and derivative result of preventing future unspecified unconstitutional acts to be perpetrated by persons unknown.[19] The ocean of difference between the approach taken by the courts below in comparison to the course set by this Court is apparent from the last para-

[19] Of the three Circuit Courts of Appeal considering this precise question, two have disapproved of this type of relief. *Peek* v. *Mitchell*, 419 F.2d 575, 579 (6th Cir. 1969), "Federal courts should not supervise the maintenance and operation" of police departments and equitable relief is inappropriate absent specific deprivations of constitutional rights by public officials; *Build of Buffalo, Inc.* v. *Sedita*, 411 F.2d 284, 288, 89 (2nd Cir., 1971), a request for relief seeking judicial revision of police disciplinary procedures described as "drastic", "extraordinary" and "far-fetched".

graphs of the opinions for this Court in both *Gilligan* and *O'Shea*. In spurning judicial evaluation of the wisdom and efficacy of executive and administrative procedures and in refusing to countenance federal judicial oversight of state criminal courts, this Court nevertheless pointed out that for their specific unlawful acts, specific persons would most certainly be held accountable in the courts. Indeed this goes to the essence of the judicial power. Conversely, the Courts below, attempting to justify judicial evaluation of the wisdom of executive action, have held that the judicial power, as created by our Constitution and Congress, is now insufficient, and that administrative efficiency and competence are now proper subjects for judicial review.

Although the Court of Appeals agreed that it would be improper for a federal district court to inject itself into the day-to-day operations of the Police Department, the Court held that in this case the District Court had not done so. Although defendants do not agree that the propriety of the District Court's intrusion turns on whether the intrusion is on a day to day basis or not,[20] the plain intent of the Court's directive is to control those day-to-day operations of the Police Department relating to the receipt, investigation and disposition of citizen complaints of police misconduct. Moreover, by promulgating its own directive without regard to such mundane, but nevertheless important administrative considerations as availability and deployment of personnel, the Court's Order seriously effects the entire police function.

The procedures proposed by the District Court govern the investigation of all complaints regarding the conduct

[20] It should be noted that in its judgment the District Court retained jurisdiction and required that defendants maintain statistics in order to effect a continuing regulatory surveillance over the performance of the police department.

of a police officer and the disposition of those complaints which, if taken as true, *do not allege that the officer has committed a crime.* Complaints alleging criminal acts on the part of a police officer are processed in accordance with another set of procedures. [App. to Pet. for Cert., p. 32a]. Except for complaints determined to be frivolous, each complaint must be fully investigated. To be acceptable to the Court, the investigation must include interviews with the complainant and/or victim, the defendant police officer, all other officials involved, all officers witnessing the occurrence, all other witnesses and possible witnesses, and a review and analysis of all physical evidence. [App. to Pet. for Cert. p. 27a]. Wherever possible, the investigator must secure written statements from the participants and witnesses to the alleged incident. [App. to Pet. for Cert., p. 28a]. The investigation must be completed in 45 days. [App. to Pet. for Cert., p. 28a]. In all cases where the investigation produces a factual dispute regarding the occurrence, the Department must convene a quasi-judicial tribunal for the purpose of conducting a public trial of an adversary nature between the complainant and the police officer. [App. to Pet. Cert., p. 33a].

Despite the disclaimers of both the Circuit Court [App. to Pet. for Cert., p. 11a] and the District Court [A., 130a], the procedures established by the District Court will interfere with the police department's primary purpose, to prevent and detect crime. In Philadelphia, a City of 2,000,000 people with the distressingly high crime rate common to virtually all of this nation's large cities, the sheer volume of crime often precludes the type of thorough investigation which the District Court requires, under pain of contempt of court, for matters which are not crimes. The police commissioner, otherwise responsible for the deployment of police personnel, must, under threat

of contempt, assign his investigators in such a manner as to insure that all non-criminal complaints regarding police conduct are thoroughly investigated within the 45 day limits set by the Court. These complaints must be investigated in strict compliance with the Court's order regardless of the number of crimes remaining unsolved, regardless of the number of crimes to be investigated, and regardless of the availability of investigatory personnel.

Even in properly performing his duty, the police officer of necessity constitutes an annoyance to persons breaking the law and to persons whom the officer has probable cause to believe are breaking the law. It is safe to say that virtually every otherwise law abiding person has felt such annoyance on receiving a traffic ticket. Yet complaints arising out of petty annoyance must be investigated and can only be dismissed as frivolous when the investigation demonstrates that the complaint and the evidence can in no way be interpreted as constituting improper conduct. [App. to Pet. for Cert., p. 31a]. In a city of 2,000,000 people, in a metropolitan area 5,000,000 people, the number of complaints of improper conduct on the part of police can be expected to be large. To be sure some will allege grievous misconduct and even criminal conduct on the part of the police officer, but the overwhelming majority will allege non-criminal conduct in the nature of a personal affront to the complainant.

The onerous nature of the judgment can best be seen by analyzing several aspects of the Court's proposed directive in light of the present-day realities of police administration. The judgment requires that complaints be filed in the operations room of each police district, and that the complaint forms be completed with the assistance of the operations room supervisor. [App. to Pet. for Cert. p. 25a]. The operations room is the nerve center for each

police district; it is supervised by a corporal and is typically manned by a turnkey and a police officer. Their duties include, but are not limited to, processing all arrests made in the district, maintenance of all district records and logs, district communication with other police units within the department and with other law enforcement agencies (via teletype and computer), providing for the care, security and transportation of all district prisoners, and providing for the maintenance of vehicles and equipment within the district. Under normal circumstances, the operations room could assume the new duties imposed by the District Court; however, the operations room staff would probably have to be augmented during periods of frequent complaints. Since it can be expected that the number of complaints will be greatest during the period of heaviest and criminal and police activity,[21] the probable result of the decree will be to reduce the police presence on the street during the periods of greatest need in order to increase the operations room staff. Thus the department is faced with a court-imposed and court-enforced misallocation of police personnel.

Based on the circumstances surrounding an incident, a complainant may be filing his complaint in the context of his being arrested and charged with a crime. In such a case, the complainant need do nothing more than lodge a complaint; he may refuse to cooperate in any way with the police investigation of his charge of misconduct until the final disposition of the criminal charges against him, including all appeals. Nevertheless, the police department is required to conduct its investigation of such a complaint despite the complainant's refusal to cooperate, and the charges of misconduct are to remain open until final

[21] e.g., the 4:00 p.m. to 12:00 midnight shift on Friday and Saturday nights in high-crime neighborhoods.

disposition of the criminal case. [App. to Pet. for Cert., 32a-33a). The effect of this aspect of the Court's decree is to impose on the police department the burden to fully investigate allegations of non-criminal conduct on the part of a police officer without even the benefit of a full statement of the claim of misconduct from the complainant.

The District Court requires that the department secure whenever possible, signed, written statements from all participants and witnesses to incidents alleged, [App. to Pet. for Cert., 28a], regardless of the burden to the department in securing such statements in incidents of non-criminal police conduct. It is appropriate to point out that an investigating serious crime such as burglary or robbery, it is the typical practice for detectives to summarize statements of witnesses, the investigatory burden being simply too great to permit the exclusive use of written, signed statements. Again, the result of the Court's decree is a misapplication and misdirection of the personnel and resources of the Police Department.

The Court's proposed directive further provides that the Police Commissioner or one of his two deputy commissioners personally review the entire investigatory file for each and every complaint of police misconduct certified to them by the Chief Inspector of the Internal Affairs Bureau. [App. to Pet. for Cert., p. 33a]. In 1974 the Police Department received approximately 1,200 complaints of police misconduct. Assuming, albeit unrealistically, that the number of complaints will not increase should the District Court's order be implemented, and further assuming that the Commissioner or Deputy Commissioner who assumes the duty of reviewing these files works 365 days per year, he would be required, under pain of contempt of court, to review, in their entirety, an average of 3.28 files per day or 23 files per week. Thus, aside from

suspending the Police Commissioner's authority in entering its order, the District Court's judgment additionally represents an unwarranted and unwise intrusion into his many other duties in administering the department.

In those cases of alleged misconduct in which the investigation produces a factual dispute regarding the incident, the police must convene a quasi-judicial tribunal for the purpose of conducting a public trial of an adversary nature between the complainant and the police officer. [App. to Pet. for Cert., p. 33a]. Aside from duplicating the functions of the federal and/or state courts, the Courts below seriously underestimated the harmful effect on law enforcement which the creation of this superfluous tribunal would have. The tribunal cannot make any award or grant any benefit to a complaining citizen other than grant him the visceral self-satisfaction of knowing that he has harassed a presumably innocent policeman in the public eye. It is this context that the full impact of the difficulties caused by the District Court's decision must be seen; for, except for the most frivolous of circumstances, any person who for any reason has been annoyed or bothered by or bears a grudge against any police officer, the overwhelming majority of whom were found to have been doing their job properly [A, 123a; App. to Pet. for Cert., p. 11a], may without compunction force such a police officer to public trial. The undesirable portent of the procedures created by the District Court is that the police department will be required to investigate and hear complaints of non-criminal police conduct which have as their only motivation the harassment of the overwhelming majority of police officers who are simply doing their job. It will be these types of cases which will plague the department, and the predictable effects on law enforcement are seriously damaging to the public interest, in view of both the direct

harm to the department as set forth above and the possible reluctance of individual police officers to properly enforce the law for fear of being hauled before the tribunal for their attempts to do their jobs.

In *Pierson* v. *Ray*, 386 U.S. 547 (1967), this Court recognized the special problems faced by a police officer who is frequently and intimately involved in day-to-day contact with the citizenry and, hence, most frequently exposed to situations which can give rise to complaints regarding his performance of duty. This Court observed that a "policeman's lot is not so unhappy that he must choose between being charged with dereliction of duty if he does not arrest when he has probable cause, and being mulcted in damages if he does." 386 U.S. at 557. To paraphrase former Chief Justice Warren, the Philadelphia policeman's lot is now so unhappy that he must make the choice of being charged with dereliction of duty if he does not arrest when he has probable cause and being publically harassed if he does.

In the words of Mr. Justice Jackson, quoted with approval in *Scheuer* v. *Rhodes*, 416 U.S. 232 (1974). "It is not a tort for the government to govern." *Dalehite* v. *United States*, 346 U.S. 15, 57 (1953). (Dissenting opinion). In *Scheuer*, Mr. Chief Justice Burger further stated for the Court:

> "Public officials, whether governors, mayors or police, legislators or judges, who fail to make decisions when they are needed or who do not act to implement decisions when they are made do not fully and faithfully perform the duties of their offices. Implicit in the idea that officials have some immunity—absolute or qualified—for their acts, is a recognition that they may err. The concept of immunity assumes this and goes on to assume that it is better to risk some error

and possible injury from some error than not to decide or act at all." 416 U.S. at 241-242.

Furthermore, this Court held that because of the complexity in the range of decisions which must be made by executive officials, a qualified immunity from liability under 42 U.S.C. § 1983 was available to officers of the executive branch of government in variation dependent upon the scope of discretion and responsibilities of their office and all the other circumstances as they reasonably appear at the time of the action on which liability is sought to be based. 416 U.S. at 247-248. See also *Wood* v. *Strickland*, __ U.S. __, 43 L.Ed. 2d 214 (1975).

In suspending and arrogating to itself the discretionary powers of the local executive, the District Court has ignored the policy reasons for the extension of qualified immunities from civil liability to executive officials in suits brought under Section 1983. As surely as the potentiality of a tort suit will inhibit the exercise of executive discretion, it is far surer that the possibility of being held in contempt of court will inhibit and in fact deprive the Mayor and Police Commissioner from exercising the power and the discretion granted to them by law. They are effectively denied the power and discretion which the electors of Philadelphia decreed that they should have; rather they become puppets of the federal court subject to citation for contempt if they do not respond to every pull of the judicial string. The public policy as stated by this Court in its decisions on official immunity from damages under 42 U.S.C. § 1983 from *Tenney* v. *Brandhove*, 341 U.S. (1951), to *Wood* v. *Stickland*, supra, is completely nullified, if, in the absence of any wrongdoing and in the name of administrative wisdom, the district courts can suspend the power and discretion of local administrators and assume their power unto themselves.

II. THE LEGAL REMEDIES PROVIDED BY THE CIVIL RIGHTS ACTS AND STATE LAW OBVIATE THE NECESSITY FOR EQUITABLE RELIEF.

Where the Court below found that violations of legal and constitutional rights of citizens are committed by only a *small* percentage of the members of the Philadelphia Police force and that the evidence does *not* disclose any policy of racial discrimination or unconstitutional conduct, the imposition of injunctive relief to prevent future, unspecified and sporatic violations of constitutional rights is improper when adequate and specifically drawn legal remedies exist. Furthermore, it is even more unwarranted and onerous for the Court under such factual circumstances to order mandatory injunctive relief which provides for continued judicial surveillance, which usurps and enfeebles the discretion of local law enforcement officials and which encourages the dubious use of ad hoc equitable relief in situations where legal remedies exist by virtue of the Civil Rights Act and state law.

The District Court below, with express agreement of the Third Circuit Court of Appeals, found that existing police procedures for processing and adjudicating complaints and enforcing police discipline were inadequate for the following reasons:

(1) The procedures were geared to handle infractions of police regulations but were not formed to cover specific violations of citizens' constitutional rights;

(2) The chain of command system of departmental operation discouraged civilian complaints;

(3) There was no adequate opportunity for the complainant to present his case to an objective tribunal;

(4) The outcome of the proceedings were not disclosed; and

(5) There was a tendency to minimize the consequences of proven misconduct. [App. to Pet. for Cert., p. 6a].

In a well intended effort, the District Court devolved its plan to rectify the existing flaws mentioned above by a sweeping grant of injunctive relief. The court's solution to the problem was to create a quasi-judicial tribunal within the Police Department to handle civilian complaints of police misconduct. However, either by conscious or inadvertent design, the District Court created a mirror image of itself, a duplication of the existing and specifically created forums whose purpose it is to process and adjudicate violations law—the federal and state courts.

The federal and state courts were designed to prevent and remedy unconstitutional violations of individual rights by official misconduct. They provide:

(1) A vehicle to handle infractions by police of specific violations of citizen's rights;

(2) An easily accessable forum for complaints of unconstitutional conduct;

(3) An objective tribunal;

(4) Proceedings which are public, the outcome of which is public; and

(5) Redress and punishment for unlawful conduct.

There is absolutely no justification for assuming that the state and federal courts are incapable of providing adequate remedial relief for specific unlawful conduct perpetrated by the small minority of policemen. Moreover, in line with this Court's decisions in *Gilligan* and *O'Shea,* specific unlawful conduct by public officials will not go unpunished, and the individuals responsible will be held accountable for their unconstitutional acts. The irony is that in creating a departmental bureaucracy to receive

and adjudicate complaints of specific acts of misconduct on the part of police officers, the District Court attempted to place elsewhere the very duty which this Court has said rests with the courts. *Gilligan* v. *Morgan,* supra, 413 U.S. at 11-12; *O'Shea* v. *Littleton,* supra, 414 U.S. at 503-504.

Furthermore the District Court's finding of inadequacy was measured on a yardstick of the Court's own creation. No one has ever intimated that the police disciplinary procedures were geared to handle anything other than infractions of police regulations or that the police were not a quasi-military organization which operates in accordance with a basic command structure. The police have absolutely no duty to provide a quasi-judicial tribunal to conduct adversary hearings for violations of constitutional rights. Neither the United States Constitution (as is conceded by both the Circuit and the District Courts), nor any Federal statute, nor the Pennsylvania Constitution, nor any Pennsylvania statute, nor the Philadelphia Home Rule Charter, nor any ordinance of the City of Philadelphia purports to impose such a quasi-judicial function on the police department. Thus, in making its finding that the disciplinary procedures were inadequate, the District Court supplied itself with its own ultimate conclusion; the Court did no more than place the proverbial rabbit in the hat. The existing police disciplinary standards were never intended to meet the standards set by the Court; they were never intended to provide a surrogate judiciary; but they are fully adequate for the purpose for which they were designed—to handle infractions of police regulations.

Assuming arguendo that the existing departmental procedures were unlawful rather than merely inadequate, in order to justify its grant of an equitable remedy, the District Court was compelled to determine whether any remedy at law was adequate. *Younger* v. *Harris,* 401 U.S.

37, 43-44 (1971); *O'Shea,* supra, 414 U.S. at 499. In the instant case, the Court below ignored the available legal remedies[22] with the epitaph that they too were "inadequate". Rather than take cognizance of its own findings and conclusions which would have indicated that equitable relief was not warranted, the District Court launched into its grand design of revamping and reorganizing internal police procedures. The Court below, by judicial innovation, decided to fill the gaps that it perceived to exist in the law. More particularly, the Court below stated:

> I am convinced that . . . existing remedies are inadequate to protect the public interest involved. Private suits for damages are expensive, time consuming, not readily available, and not notably successful . . . [A 125a] 357 F. Supp. at 1319.

Such a blandishment ignores the true facts:

(1) Many civil rights suits are handled on a contingent fee basis, and there are many organizations specializing in and actively soliciting civil rights cases, thereby providing legal expertise on a nonpayment basis;[23]

(2) Civil rights suits have been increasing, not decreasing;[24]

(3) The federal courts have liberally interpreted the Civil Rights Act to afford easy judicial access to civil rights claimants. *Haines* v. *Kerner,* 404 U.S. 519 (1972); *Conley* v. *Gibson,* 355 US 41 (1957).

Before resorting to equitable relief, the courts are under a duty to examine the available legal remedies in light of the facts in any given case to determine whether they are adequate to afford substantial redress for the wrong suffered. *Harrisonville* v. *U. S. Dickey Clay Mfg. Co.,* 289 U. S. 334 (1932). Only upon the traditional showing of irreparable injury, may the courts resort to the injunction. *Younger* v. *Harris,* 401 U. S. at 46; *O'Shea,* supra, 404 U. S. at 499. Also, while considering the nature of the injury to the moving party, the Court must also weight the potential harm, injury or hardship that the imposition of an injunction would cause the defendant. *Harrisonville* v. *Dickey,* supra. at 338; *O'Shea* v. *Littleton,* supra at 499, *Younger* v. *Harris,* supra.

The availability and adequacy of money damages to compensate individuals whose constitutional rights have been violated by public officials was discussed in *Monroe* v. *Pape,* 365 U. S. 167 (1961). In that case, this Court analyzed the purposes behind the enactment of the Civil

[22] For example (1) common law torts (false arrest, false imprisonment, malicious prosecution, assault and battery, etc.); (2) criminal offenses covered by the Pennsylvania Criminal Statutes (e.g. assault and battery); (3) State statute forbidding the neglect and abuse of police power in periods of emergency, Act of May 3, 1850, P.L. 666, § 29, 53 P.S. § 16627 which provides as follows:

> "The said Marshall of police, lieutenants of police, and policemen hereby organized, for any neglect of their duties, or abuse of the powers hereby granted, shall, upon complaint duly made to the judges of the Court of Quarter Sessions for the County of Philadelphia, by any citizen or other person aggrieved, be examined as to the justness of said Complaint; and if upon examination said judges, or anyone of them, shall be satisfied that there is sufficient cause to bind over, the said party or parties shall there upon be bound over to take his or their trial for a misdemeanor in office; and upon conviction, shall be punished as misdemeanors are now by law punishable.";

(4) The Civil Rights Act, 42 U.S.C. 1983, which provides legal remedies for violations of constitutional rights; (5) various other federal acts providing civil or criminal redress for violation of constitutional rights.

[23] e.g., the American Civil Liberties Union, Community Legal Services, Public Interest Law Center of Philadelphia.

[24] The 1974 Annual Report of the Director of the Administrative Office of the United States Courts notes that in 1974 there were over 8,000 civil rights suits filed in the U. S. District Court. Such is a remarkable increase over the mere 296 that were filed when the decision in *Monroe* v. *Pape* was reported in 1961. *Polite* v. *Diehl,* et al., ___ F.2d ___, No. 72-2013, 3rd Cir., Dec. 31, 1974, slip opinion. p. 41-2, Kalodner, *J.,* dissenting.

Rights Act of 1871, 42 U.S.C. § 1983. On behalf of the majority of the Court, Mr. Justice Douglas stated that there were three purposes:

(1) To override certain kinds of state law;

(2) to provide a remedy for violation of constitutional rights where state law was inadequate;

(3) to provide a federal remedy where state remedies, though adequate in theory, were not available in practice. 365 U. S. at 173-174.

The main thrust of the Civil Rights Act as explained in *Monroe* v. *Pape* was to afford remedial relief in the form of damages for violations of constitutional rights, however slight. Mr. Justice Douglas reported that during senatorial debates it was mentioned that the proposed civil rights legislation was to afford the right to

> ". . . any person who is deprived of any right, privilege, or immunity secured to him by the Constitution of the United States, to bring an action against the wrongdoer in the Federal Courts, and that without any limit whatsoever as to the amount in controversy. The deprivation may be of the slightest conceivable character, the damages in the estimation of any sensible man may not be five dollars or even five cents; they may be what lawyers call merely nominal damages; and yet by such section jurisdiction of that civil rights action is given to the Federal Courts . . ." 365 U.S. at 180-181.

Furthermore, Justices Harlan and Stewart in their concurring opinion viewed the Civil Rights Act as a positive force elevating the importance of Civil Rights violations to a significantly higher level than would have theretofore existed in state law. In their opinion a violation

of a constitutional right by a public official justified a substantial award in damages.[25]

In every single instance of abuse by individual policemen enumerated by the Court below, the legal remedies provided by the Civil Rights Act would have more than adequately compensated the complainants, and were specifically drawn for just that purpose.[26] If the District Court had found that the defendant City officials were responsible for the instances of unconstitutional conduct that occurred, certainly stringent remedies would have been indicated.[27] However, by its intrusion, the District Court has placed itself as the monitor of the conduct of each officer and by doing so has thrust itself into the middle of a hopeless, never ending battle between those in whom we entrust the enforcement of the law and those against whom the law is enforced.

In *O'Shea* v. *Littleton,* supra, 414 U. S. at 503-504, this Court specifically held that the presence of state and federal legal remedies constituted adequate remedies at law which precluded injunctive relief against future, un-

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[25] Even though the Act provides for equitable relief where warranted, resort to damages should be more than adequate except under extraordinary circumstances. This is true when one considers that Justices Harlan and Stewart believed that the Civil Rights Act was more than a jurisdictional provision only and that the enacting legislature had the view that "a deprivation of a constitutional right is significantly different and more serious than a violation of a State right and therefore deserves a different remedy even though these same acts may constitute both a State tort and the deprivation of a constitutional right." 365 U.S. at 196.

[26] This is especially true where the occasions of police brutality and discrimination are not sanctioned or encouraged by higher public officials, and only a few police officers commit the abuses. The fact that a small number of police officers occasionally act unconstitutionally does not justify such an extensive and overwhelming intrusion by a federal court into the day to day operation of the Department.

[27] *Hague* v. *C.I.O.,* 307 U. S. 496 (1938); *Allee* v. *Medrano,* 416 U. S. 802 (1974); *Lankford* v. *Gelston,* 364 F. 2d 197 (4th Cir. 1966).

specified unconstitutional acts on the part of specific judicial officers. Similarly, future, unspecified unlawful acts of *unspecified* police officers can and should be remedied by justice meeted out in the federal and state courts pursuant to statutory and common law. The injunctive power of the federal court should not be exercised except in exceptional cases to prevent injuries that are clear and imminent. *Douglas* v. *City of Jennette,* 319 U. S. 157, 163 (1943); *O'Shea* v. *Littleton,* supra.

The Court below would enjoin unspecified future police misconduct by imposing its will on the Police Commissioner with consequent disruption of the Department's primary functions, notwithstanding the absence of a finding that the defendant officials condoned, approved, participated in or accepted unconstitutional conduct on the part of individual police officers. If it may be reiterated, the nub of this case is that the disciplinary procedures of the Philadelphia Police Department were found to be unwise and inadequate—not unlawful, and they are thus beyond judicial remedy. Considering the availability of other avenues of relief for violation of federal and state rights by police officers and the abrasive, unmanageable and unwise intrusion into police administration which the injunctive relief represents, petitioners respectfully submit that the Circuit Court of Appeals erred in affirming the injunctive relief granted by the District Court.

CONCLUSION

For the foregoing reasons, it is submitted that the Circuit Court of Appeals for the Third Circuit was in error in affirming the injunctive relief granted by the District Court. Petitioners respectfully request that this Honorable Court reverse the decision of the Circuit Court.

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CERTIFICATION OF SERVICE

I, James M. Penny, Jr., Assistant City Solicitor and counsel for Petitioners, do hereby certify that three copies of the Brief for Petitioners and three copies of the Appendix were served by hand on Peter Hearn, Esquire and William Lee Akers, Esquire, Counsel for Respondents on the 21st day of May, 1975. I further certify that all parties required to be served have been served.

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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1975

No. 74-942

FRANK L. RIZZO, et al.,

v.

Petitioners,

GERALD G. GOODE, et al.,

Respondents.

HONORABLE JAMES H. J. TATE,
FRANK L. RIZZO, et al.,

v.

Petitioners,

COUNCIL OF ORGANIZATIONS ON PHILADELPHIA POLICE ACCOUNTABILITY AND RESPONSIBILITY, et al.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

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IN THE

Supreme Court of the United States

—

OCTOBER TERM, 1975.

—

No. 74-942.

—

FRANK L. RIZZO, ET AL.,

Petitioners,

v.

GERALD G. GOODE, ET AL.,

Respondents.

—

HONORABLE JAMES H. J. TATE,
FRANK L. RIZZO, ET AL.,

Petitioners,

v.

COUNCIL OF ORGANIZATIONS ON PHILADELPHIA
POLICE ACCOUNTABILITY AND
RESPONSIBILITY, ET AL.,

Respondents.

—

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

———

BRIEF FOR RESPONDENTS.

—

COUNTER STATEMENT OF THE QUESTION PRESENTED.

Did the District Court abuse its equitable powers in requiring municipal officials to establish adequate citizen complaint procedures within the police department in order to supervise and control police conduct where the trial record compellingly demonstrated frequent constitutional violations by policemen and a departmental policy of disregarding and minimizing such violations?

COUNTER STATEMENT OF THE CASE.

Introduction.

The issue before this Court is the propriety of the injunctive relief accorded by the District Court, and approved by the Court of Appeals – relief which was explicitly predicated upon an uncontested finding of "recurring and otherwise predictable violations of the constitutional rights of [Philadelphia] citizens" by members of the Philadelphia Police Department (A 128a-29a, 357 F. Supp. at 1320).[1] The relief was further based upon a finding of official acquiescence by petitioners (hereinafter "defendants") in such violations as reflected in the clear *policy* of the named defendants to do "little or nothing" with regard to their remedy or prevention (A 13a, 25a, 38a-39a, 62a, 126a; 357 F. Supp. at 1319).

1. Page references to the Appendix in this Court are designated by the letter "A" and appropriate page number. Page references to the Appendix to the Petition for Writ of Certiorari are designated as "App. Cert. Pet." and appropriate page number. All references to the opinion of the District Court will be both to the Appendix (A 65a-130a) and, for convenience, the reported decision, 357 F. Supp. 1289 (E. D. Pa. 1973). Similarly, references to the opinion of the Court of Appeals will be both to the Appendix to the Petition for Writ of Certiorari (1a-19a), and to the reported decision, 506 F. 2d 542 (3d Cir. 1974). The final judgment is set forth in the Appendix to the Petition for Writ of Certiorari (20a-23a).

Two separate civil rights actions, *Goode v. Rizzo* (hereinafter "*Goode*") and *COPPAR*[2] *v. Tate* (hereinafter "*COPPAR*"), were brought pursuant to 42 U. S. C. § 1983 by different respondents (hereinafter "plaintiffs") on behalf of minority citizens and residents of the City of Philadelphia seeking various forms of equitable relief to eliminate and prevent the recurrence of ongoing violations of plaintiffs' constitutional rights permitted, condoned and acquiesced in by defendants. The complaint in *Goode* was filed on February 17, 1970 by three individual plaintiffs on behalf of themselves and the class of all residents of Philadelphia. Plaintiffs alleged that they had been unlawfully assaulted and otherwise abused by certain named police officers, that these officers were biased against black and other minority groups and habitually violated the constitutional rights of private citizens; that the proclivities of these officers were known to their superiors; that by failing to take appropriate disciplinary actions, the defendants, who were in control of the supervision of the Police Department, acquiesced in and condoned these illegal and unconstitutional activities. Plaintiffs further alleged that the absence of adequate machinery for dealing with citizen complaints constituted persuasive but by no means the only evidence of official indifference to police abuses. Plaintiffs requested, *inter alia,* an injunction directed at reducing the instances of unconstitutional behavior. On May 12, 1970, the District Court entered an order permitting the case to be maintained as a class action on behalf of all residents of the City of Philadelphia and an included class of all black residents of Philadelphia pursuant to F. R. Civ. P. 23(b)(2) (A 24a).

2. COPPAR is an acronym for Council of Organizations on Philadelphia Police Accountability and Responsibility.

The complaint [3] in *COPPAR* [4] was filed on September 3, 1970 by twenty-one individuals and four organizations. Plaintiffs alleged widespread and systematic violations of constitutional rights of citizens by various members of the Philadelphia Police Department with the express or tacit approval of their superiors. Contrary to the statement in defendants' Brief in this Court, plaintiffs *specifically alleged supervisory indifference by defendants.*[5] Plaintiffs

3. In advance of the hearings in *COPPAR*, plaintiffs provided a list of witnesses and a brief description of each incident charged. The Court of Appeals stated "this may properly be considered an amendment to the complaint and was so treated by the district court." (App. Cert. Pet. 8a, 506 F. 2d at 546). Many of these additional parties testified in the District Court. Among the additional parties included in plaintiffs' list were the following: Raymond Ragland (A 89a-90a, 357 F. Supp. at 1302); Howard Schwartz (A 90a-91a, 357 F. Supp. at 1302-3); Kenneth Lassiter (A 91a-93a, 357 F. Supp. at 1303-4); Helen Peurifoy (A 93a-95a, 357 F. Supp. at 1304); Jean Thomas (A 96a-97a, 357 F. Supp. at 1305-6); Oliver and Linda Locke (A 107a-9a, 357 F. Supp. at 1310-11); Thomas Lodico (A 109a-10a, 357 F. Supp. at 1311-12); Mark Soto and Jerry Serrano (A 111a-13a, 357 F. Supp. at 1312-13); Albert Boccuto and Anthony Dignetti (A 114a-16a, 357 F. Supp. at 1314); Mr. and Mrs. Leon Brown (A 117a-18a, 357 F. Supp. at 1315-16); Edward Smalley (A 117a-18a, 357 F. Supp. at 1315-16).

4. Defendants' description of the *COPPAR* case in their Brief attempts to discredit the case in this Court's eyes. For example, defendants state that the Black Panther Party had chosen Philadelphia to be the host city for a convention "which was to bring some six thousand advocates of violent and non-violent political revolution into the City." (Brief for Petitioners 9, hereinafter "Pet. Br."). In reality, approximately 500 persons attended an entirely peaceful convention, many of whom were long-term residents of Philadelphia.

5. Defendants contend that they were not on notice that police disciplinary procedures were an issue in the *COPPAR* case (Pet. Br. 13 n. 14). However, the complaint in *COPPAR* expressly alleged official acquiescence in and toleration of police misconduct through failure to take any disciplinary action against offending police officers (A 45a-46a, ¶¶ 36, 38, 39), and at trial plaintiffs produced evidence concerning the complaint procedures (A 67a, 357 F. Supp. at 1291). Defendants did not produce any evidence in response despite the fact that the hearings were held over a

sought a temporary restraining order, preliminary injunction, permanent injunction enjoining future constitutional violations and appointment of a receiver for the Police Department. On September 4, 1970, the District Court issued a temporary restraining order enjoining the defendant police officials and all police officers from violating the constitutional rights of the plaintiffs or the class of plaintiffs (A 67a, 357 F. Supp. at 1291). The order expired on November 2, 1970.[6]

Defendants in both cases were the city and police officials admittedly charged with the responsibility of supervising, controlling and disciplining the Police Department,[7] and each was named a defendant in his official

5. (Cont'd.)
four and one half month period and there were lengthy periods between hearing sessions during which defendants could have easily assembled evidence on these matters. Moreover, defendants, who were represented by the same counsel in both cases, were on notice since January 19, 1971, well before the March 14, 1973 opinion and order were issued, that the District Court intended to consolidate the *COPPAR* case with *Goode* for purposes of relief (*COPPAR* Record 2175). Furthermore, in January, 1973, the District Court afforded defendants the opportunity to reopen the hearings in order to produce additional relevant evidence and defendants declined to do so (A 120a n. 1, 357 F. Supp. at 1317 n. 1).

6. *COPPAR* Record 326-27. The order provided in relevant part:

> "The defendant police officials and all police officers in Philadelphia having notice hereof, are restrained and enjoined, until further hearing in this matter from violating the rights of the Plaintiffs or any member of the class of Plaintiffs guaranteed to them under the Constitution of the United States or directly or indirectly causing any such violation; and particularly are restrained and enjoined from entering, without warrant or probable cause, the homes of Plaintiffs and members of the class of Plaintiffs, or harassing or arresting said class members in violation of their rights as citizens. Nothing in this order shall be construed as limiting in anyway the authority of the police to enforce the law in a lawful manner, and to exercise and defend their own rights as citizens." (App. Cert. Pet. 229a).

7. The complaint in *Goode* named the following elected and appointed officials of the City of Philadelphia as defendants and alleged each held the following duties and responsibilities:

capacity. Defendants in both cases were represented by the same counsel (A 65a, 357 F. Supp. at 1290). Because

7. (Cont'd.)

James H. J. Tate, Mayor,

"responsible for the conduct of the executive and administrative work of the City and for law enforcement within its boundaries;"

Fred T. Corleto, Managing Director,

"is charged under Section 5-100 of the Philadelphia Home Rule Charter (hereinafter 'Charter') with the exercising of supervision over all activities of those departments whose heads he appoints. Pursuant to Charter Section 3-206, the Managing Director with the approval of the Mayor, appoints the Police Commissioner of the City of Philadelphia."

Frank L. Rizzo, Police Commissioner,

"pursuant to Charter Section 3-404, serves at the pleasure of the Managing Director. He also has duties of supervision and control over activities of the Police Department. Pursuant to Charter Section 5-200(b), the Police Department "shall . . . *discipline* the Philadelphia Police." (emphasis added).

Robert G. Selfridge, Deputy Police Commissioner, "in charge of the activities of uniformed police and exercises powers of supervision and control over uniformed police officers in the City of Philadelphia."

William Murphy, Chief of Highway Patrol,

"exercises powers of supervision and control over its members."

Defendants admitted each of these allegations in their answer (A 13a, *Goode* Complaint, ¶¶ 7-11; A 25a, Answer of Defendants, ¶¶ 7-11), and each of these admitted allegations became part of the evidence before the District Court. *Goode* Record 5-6; A 68a-69a, 357 F. Supp. at 1292. By order of the District Court of September 11, 1973, the individuals who had succeeded to these official positions were substituted as defendants.

The complaint in *COPPAR* named several of the same elected and appointed officials of the City of Philadelphia as defendants and alleged each held the following duties and responsibilities:

James H. J. Tate, Mayor,

"is responsible for the conduct of the executive and administrative work of the City and for law enforcement within its boundaries."

Fred T. Corleto, Managing Director,

"is charged under Section 5-100 of the Philadelphia Home Rule Charter (Hereinafter referred to as 'Charter') with the exercising of supervision over all activities of those departments

of the substantial identity as to subject matter, the Honorable John P. Fullam, at the conclusion of the *COPPAR* trial, consolidated the two cases insofar as the appropriate relief was concerned (A 65a, 357 F. Supp. at 1290; *COPPAR* Record 2175). No objection to consolidation was raised by defendants (*COPPAR* Record 2175-76).

The Nature of the Record.

The testimony presented at trial, in light of the importance of the subject matter, the conflicting interests, and the subtlety of the institutional issues involved, was of necessity voluminous and complex (A 65a-66a, 357 F. Supp. at 1291). During the two trials, there were twenty-one days of hearings during which approximately 250 witnesses [8] testified.[9] For present purposes, the

7. (Cont'd.)

whose heads he appoints. Pursuant to Charter Section 3-206, the Managing Director with the approval of the Mayor appoints the Police Commissioner of the City of Philadelphia."

Frank L. Rizzo, Police Commissioner,

"pursuant to Charter Section 3-404, serves at the pleasure of the Managing Director and the Mayor of Philadelphia. His duties include supervision and control over activities of the Police Department."

Defendants Tate, Corleto and Rizzo admitted each of these allegations and the District Court found they had these responsibilities (A 38a-39a, *COPPAR* Complaint, ¶¶ 13-17; A 62a, Answer of Defendants, ¶ 8; A 68a-69a, 357 F. Supp. at 1292). The District Court by order of May 14, 1973 directed that appropriate amendments be made to the caption to reflect changes in personnel (A 131a, 357 F. Supp. at 1321).

8. The witnesses in the two cases are broken down as follows:

	Plaintiffs' Witnesses	*Plaintiffs' Experts*	*Police Officers*	*Defendants' Non-Police Witnesses*
Goode	41	5	13	12
COPPAR	55	3	95	13

9. In addition to the evidence presented in the *Goode* and *COPPAR* cases, Judge Fullam took cognizance of another class action suit pending before another judge of the District Court

record may be divided into two separate but interrelated

9. (Cont'd.)
against essentially the same defendants. *Alexander v. Rizzo*, Civil No. 70-992 (E. D. Pa., Dec. 18, 1972). The complaint in the *Alexander* case alleged discrimination against blacks by Philadelphia police through the practice of widespread arrests "for investigation" without issuance of a warrant, without probable cause and without criminal charges being filed against the individuals arrested and detained. The action resulted in a consent decree granting injunctive relief (A 66a-68a, 357 F. Supp. at 1291-92).

Moreover, the principal defendants in this case have been before the federal court on other occasions charged with violating the constitutional rights of citizens. *E.g., Commonwealth of Pennsylvania v. O'Neill*, 348 F. Supp. 1084 (E. D. Pa. 1972), *modified*, 473 F. 2d 1029 (3d Cir. 1973) (preliminary injunction issued by Judge Fullam against city and police officials to correct racially discriminatory hiring and promotion policies of the Philadelphia Police Department. The court found, *inter alia*, that "[t]he record shows clearly that, since the Police Department was given the final responsibility for hiring policemen, in mid-1969, there has been a dramatic decrease in the numbers and precentages of blacks hired as policemen." *Id.* 1104); *Leslie Tobin Imports, Inc. v. Rizzo*, 305 F. Supp. 1135 (E. D. Pa. 1969) (finding by the court that repeated raids by police of store selling jewelry, incense, posters, etc. and seizure of alleged obscene material without prior judicial hearing as to whether the material was obscene "fell far short of constitutional demands." Prosecutions of store employees arising out of the raids were all dismissed by the state courts. The court issued an injunction directed against defendant Rizzo, who was then Police Commissioner, to prevent such conduct by his subordinates in the future.); *Hughes v. Rizzo*, 282 F. Supp. 881 (E. D. Pa. 1968) (finding by the court of repeated mass arrests and harassment by police of "hippies" frequenting a public park in a wealthy center-city residential area. No criminal charges were filed against those arrested and the court concluded that the arrests and continued harassments were "totally unjustified". *Id.* 883); *Heard v. Rizzo*, 281 F. Supp. 720, 733 (E. D. Pa.), *aff'd mem.*, 392 U. S. 646 (1968) (although denying plaintiffs' claim that certain Pennsylvania criminal statutes were unconstitutionally vague and overbroad, a three judge court gave recognition to the extensive evidence presented concerning violation of plaintiffs' First Amendment rights and the use of excessive force by police).

Another case involved the flagrant violation by numerous police officers and their superiors of an explicit restraining order against arrest and removal of peaceful demonstrators with anti-war signs at Independence Hall during a speech by former President Nixon under circumstances found by the court to be both deliberate

foci: first, testimony as to approximately forty-one [10] incidents involving plaintiffs and other members of the general public and approximately 150 individual police officers which caused the District Court to conclude that the level of police abuses was "unacceptably high," (*e.g.*, A 67a, 130a, 357 F. Supp. at 1291, 1321) including, an identification and analysis of certain kinds of citizen-police encounters which may generally, and predictably, give rise to police assaults, unlawful searches and wholly improper "investigative" arrests (*e.g.*, A 122a, 124a, 357 F. Supp. at 1317-18); and second, "a mass of evidence" (A 67a, 357 F. Supp. at 1291) dealing with the defendants' indifference and inaction with regard to preventing recurring and predictable abuses and protecting plaintiffs' class from the consequences thereof (A 122a-25a, 357 F. Supp.

9. (Cont'd.)
and systematic. *Farber v. Rizzo*, 363 F. Supp. 386, 395 (E. D. Pa. 1973) ("The facts established at the hearing demonstrate beyond any doubt that the Philadelphia Police Department engaged consciously and intentionally in conduct which was violative of the TRO. These established facts illuminate a course of conduct by which the police denied entrance to the [Independence] Mall to anyone they encountered with a sign and harassed those in the Mall who had signs . . . or opposed their actions vociferously. . . . This conduct began before the TRO was signed and continued unabated after the police, both the officers stationed around the Mall and their superiors . . ., received notice of the Court's order." *Id.* 395.)

10. In reality, there were significantly more than forty-one incidents presented. In a number of cases, the District Court made findings of facts about multiple, separate and distinct constitutional violations but subsumed them under one "incident" because of the proximity of time or place. *E.g.*, Stop and Frisk Incidents of September 1, 1970, A 104a, 357 F. Supp. at 1309 (3 separate illegal stops and frisks by police officers involving 45 black youths); Locke and Perry Incident, A 107a-9a, 357 F. Supp. at 1310-11 (initial incident, followed 3 days later by two searches; unrelated illegal arrest two months later); Mr. and Mrs. Leon Brown, and Edward Smalley, A 117a-18a, 357 F. Supp. at 1315-16 (two unrelated searches on same day); 23rd and South Streets Incident, A 101a-3a, 357 F. Supp. at 1307-8 (detention of at least 27 blacks "for investigation").

at 1317-19). It should be noted that in evaluating the evidence presented, Judge Fullam gave the police "the benefit of the doubt" in resolving conflicts and judging credibility and accorded defendants "the full benefit of the presumption that the police officers acted properly." (A 68a, 80a, 357 F. Supp. at 1292, 1298; *see also* A 83a, 108a, 357 F. Supp. at 1299, 1311).

Evidence as to Overt Unconstitutional Police Conduct.

Ten [11] of the incidents referred to were presented as part of the plaintiffs' case in *Goode*. The evidence presented was expressly limited to incidents in which Officer Anthony DeFazio and/or Officer John D'Amico, both members of the Highway Patrol Division of the Philadelphia Police Department, took part. Of these ten incidents, six [12]

11. There has been some confusion throughout this case about the precise number of "incidents" involved. For example, defendants stated in their brief that there were only nine incidents in the *Goode* case (Pet. Br. 8). The District Court stated that evidence was presented of "10 specific instances of alleged violations." A 67a, 357 F. Supp. at 1291. Similarly, the defendants understated the number of incidents in the *COPPAR* case (Pet. Br. 12). The District Court made findings of fact concerning 28 incidents, but listed only 27. Two incidents were enumerated as number 5 (*See* A 91a and 93a, 357 F. Supp. at 1303 and 1304). In addition, the District Court made no findings of fact concerning three other incidents. Two of these involved searches of named plaintiffs' homes. The third was the Harris Sokoloff Incident (*COPPAR* Record 771, 786, 2081, 2097, 2114), for which no findings were made because it occurred after November 1, 1970, the cutoff date agreed upon for testimony (*COPPAR* Record 2174).

12. Roy Lee Shaw, A 74a-75a, 357 F. Supp. at 1294-95; Gerald G. Goode, A 75a-78a, 357 F. Supp. at 1295-97; Ballow Incident, A 78a-79a, 357 F. Supp. at 1297; Herbert Brown, A 80a, 357 F. Supp. at 1297-98; Bernard Sisco, A 80a-83a, 357 F. Supp. at 1298-99; Joseph Reas, A 83a-84a, 357 F. Supp. at 1299-1300.

The first incident, Roy Lee Shaw, occurred on March 10, 1969. The last of the six, Ballow Incident, occurred on June 20, 1970. Thus, the six incidents involving misconduct in the *Goode* case took place over a span of fifteen months. When considering the frequency of misconduct demonstrated in *Goode*, it is important to note that the incidents presented were specifically limited to ones in which Officers DeFazio and/or D'Amico were involved.

were introduced to demonstrate, and the District Court found, constitutional violations and instances of misconduct on the part of the two police officers and others, including illegal arrests, illegal searches and a number of instances of the administration of summary punishment.

For example, in the Gerald Goode incident (A 75a-78a, 357 F. Supp. at 1295-97), Officers DeFazio and D'Amico pursued and stopped the car in which plaintiff Goode, then a graduate student at the University of Pennsylvania, was a passenger and forced him out of the car because Goode had criticized the officers' conduct in frisking a black man at a corner several blocks away. When he asked for an explanation for the police action, Goode was struck across the face with a blackjack and later required multiple stitches.[13] He was arrested and held overnight in jail on charges of assault and battery on an officer, resisting arrest and breach of the peace. All charges against Goode were later dismissed. The District Court concluded "it is entirely clear that there was no probable cause for arresting Mr. Goode, and that the conduct of the police was in flagrant violation of the law and the Constitution." (A 78a, 357 F. Supp. at 1297).

13. The driver of the car was the wife of a Deputy District Attorney. With respect to the beating of Goode, she testified:

Q. All right, did the officers succeed in getting the rear door unlocked?

A. Yes, they did.

Q. Then what happened?

A. They pulled Gerald Goode out of the car. Oh, first before they pulled Gerald Goode out of the car, I remember them saying to him, after he said, "Are you sure you have the right to do this?" or "What are you doing?" They said, "Don't give me any of that intellectual shit."

• • •

Q. And then what happened?

A. They started hitting him and first he was facing them and they hit him with a—what looked like a nightstick, and

The Roy Lee Shaw incident (A 74a-75a, 357 F. Supp. at 1294-95) involved the arrest of a sixteen year old black high school student who was stopped by Officer DeFazio after purchasing a pack of cigarettes in a local store after school. The cigarettes possibly caused a bulge in his pocket although there was no police testimony concerning this incident (*See Goode* Record 34). When Shaw asked why he was being stopped, Officer DeFazio struck him in the head several times with a blackjack. Shaw then hit DeFazio with his fist and started to run away. DeFazio ran after him, drew his revolver and fired a shot at Shaw. Shaw stopped, DeFazio grabbed him, placed handcuffs on him and pushed him into the police car. DeFazio then proceeded to beat Shaw with a blackjack while Shaw was handcuffed inside the car. Other officers arrived at the scene, dragged Shaw out of the car and violently pushed him into the police wagon. Shaw's mother, having heard of the incident, arrived at the scene at this time and pleaded with the officers to stop hitting her son. One of the officers then threatened to hit her. When Shaw arrived at police headquarters, he was beaten again by officers with nightsticks. He was taken to a hospital where he received multiple stitches in his head (*Goode* Record 16-37, 43-53).[14] Judge Fullam concluded: "There was no

13. (Cont'd.)

then they turned him and put his hands up against my car, and they frisked him, and they kept on hitting him with the nightstick.

(*Goode* Record, Testimony of Mrs. R. Rotko, 248-49).

14. Mrs. Brown, who lived across the street from where the incident occurred and who did not know Shaw, testified that she saw Officer DeFazio stop and shove Shaw against a building and hit him in the head when the boy questioned why he had been stopped. She continued her testimony as follows:

A. And when the boy reached the fence which was at the end of the store, the officer pushed him against the fence, and he took his right foot and kicked the boy on his left, just about

basis for stopping Shaw in the first place, there was no probable cause to arrest him, and his arrest was illegal." (A 75a, 357 F. Supp. at 1295).

In the Joseph Reas incident (A 83a-84a, 357 F. Supp. at 1299-1300), a sixteen year old white male was attending a carnival in a parochial school playground in a largely white section of the city. He had not been engaged in any criminal or improper behavior. Reas and three other boys went to get a drink at the football field which was part of the school playground and saw a girl there whose face was bleeding. They asked the girl what happened but she was dazed and crying and did not answer. Someone then yelled "Cops" and three boys started running. Reas did not start to run until he saw officers coming toward him with nightsticks raised over their heads. He was then hit on the back of the head twice and fell to the ground. When he tried to turn his head to see who

14. (Cont'd.)

where his ankle was, I guess to try to make him lose his balance, and I left the window again.

By the time I got my coat and got downstairs, the officer had him to the car, and he was in the car. The boy was handcuffed, with his hands behind him, and the boy was lying on his face, and the officer was beating him by the time I got downstairs and across the street.

• • •

A. When I went across the street, I stood on the steps and about that time there was another police car was there [*sic*], and they were beating him. He was on one side. He was on the—right opposite, right across in front of 2857. The officer there was on that side of the car. The other two officers came to the other side of the car and opened the door, and the boy was handcuffed there with his hands behind him on his face.

Q. In the car?

A. Yes.

Q. And what were they doing to him?

A. They were beating him. (*Goode* Record 60-62)

Other eyewitnesses also confirmed this testimony. (*Goode* Record, Testimony of Mrs. J. Berry 76-83; Testimony of Mrs. A. Tolliver 99-102; Testimony of Mrs. C. Ruffin 106-10).

had hit him, the officer struck him in the head again. With his head bleeding, Reas was placed in a police wagon, where he lost consciousness. He awoke in the hospital where he received several stitches and remained for two days. He was charged with inciting to riot but the charges were dropped almost immediately. Mrs. Reas' repeated requests of supervisory officers that they identify the officer who beat her son received no attention. No contrary testimony was given by any police officers concerning this incident (*Goode* Record 580-604).

Of the four other incidents presented at the *Goode* trial, two [15] involved racial and ethnic slurs, which although not constitutional violations in and of themselves, demonstrated the attitude of the officer involved and the knowledge of his superiors concerning this conduct and were presented for those purposes. The remaining incidents involved complaints by Officer DeFazio's neighbors made to his immediate superior officers. No action was taken by officials as to these complaints, which were "substantially uncontradicted" and raised "further serious questions about DeFazio's fitness for police work." [16] (A 86a, 357 F. Supp. at 1300).

The remaining thirty-one incidents were presented by plaintiffs in the *COPPAR* case. As to two incidents involving alleged violations of named plaintiffs' constitutional

15. Louis J. Reed, A 84a-85a, 357 F. Supp. at 1300; "Jew Bastard" Incident, A 85a-86a, 357 F. Supp. at 1300. Mrs. Reed, a named plaintiff, was the wife of a Philadelphia Common Pleas Court judge. A 84a-85a, 357 F. Supp. at 1300.

16. Serious question about DeFazio's fitness also arose from a finding by the Police Department psychiatrist that he was psychiatrically "unfit" for police duty. This examination, administered at the time of DeFazio's application for employment, was repeated 3½ months later resulting in his passing with a low rating. *Goode* Record 469-70; Exhibit P-28A to D.

rights, the District Court made no findings of fact.[17] As to sixteen [18] of the incidents, the District Court found violations of federally secured rights, including at least five police assaults, and eleven patently unlawful investigative arrests and detentions.

In the Johnson and Simon incident (A 105a-6a, 357 F. Supp. at 1309-10), for example, two black high school students were walking in front of one of the boy's homes. Two police officers, while driving past the youths, heard one of them say something which they could not decipher.

17. Tony Britt Incident, *COPPAR* Record 32; Gary McNeal Incident, *COPPAR* Record 27.

18. Raymond Ragland, A 89a-90a, 357 F. Supp. at 1302; Howard Schwartz, A 90a-91a, 357 F. Supp. at 1302-3; Kenneth Lassiter, A 91a-93a, 357 F. Supp. at 1303-4; Helen Peurifoy, A 93a-95a, 357 F. Supp. at 1304; Mary Blackwell, A 95a-96a, 357 F. Supp. at 1305; Black Panther Party Incidents, A 99a-100a, 357 F. Supp. at 1307; 23rd and South Sts. Incidents, A 101a-3a, 357 F. Supp. at 1307-8; Wilfredo Rojas, A 103a-4a, 357 F. Supp. at 1308-9; Johnson & Simon Incidents, A 105a-6a, 357 F. Supp. at 1309-10; Alaberti & Whelan Incidents, A 106a-7a, 357 F. Supp. at 1310; Locke & Perry Incidents, A 107a-9a, 357 F. Supp. at 1310-11; Thomas Lodico, A 109a-10a, 357 F. Supp. at 1311-12; Soto and Serrano Incident, A 111a-13a, 357 F. Supp. at 1312-13; Ellis Steward Incident, A 113a-14a, 357 F. Supp. at 1313-14; Boccuto & Dignetti Incidents, A 114a-16a, 357 F. Supp. at 1314; Brown & Smalley Incidents, A 117a-18a, 357 F. Supp. at 1315-16.

The opinion of the trial court summarizes the facts of these incidents, and, in some cases, does not explicitly add a finding of federal violations. However, in those cases, the facts, as found, reveal such violations, and, in at least two such incidents whose textual summary did not contain an explicit "federal violation" conclusion, the court, later in its opinion, characterized the activities of the police officers involved as a violation of the temporary restraining order entered at the inception of *COPPAR*. *Compare* textual discussion of Johnson & Simon and Ellis Steward incidents, A 105a-6a, 113a-14a, 357 F. Supp. at 1309-10, 1313-14, *with* discussion of the violated temporary restraining order at A 126a, 357 F. Supp. at 1319. Moreover, the trial court's findings with respect to the individual incidents must be considered in the light of its conclusion that the totality of evidence established that violations of the legal and constitutional rights of citizens by the police "do occur in an unacceptably high number of instances." (A 130a, 357 F. Supp. at 1321).

The officers turned their car around, stopped the boys, demanded to know what had been said, frisked them and asked for identification. Johnson produced his wallet which contained his identification and told the police that he lived in the house in front of which they were standing. Johnson's grandmother came out of the house and asked where the boys were being taken, but the police did not reply. Instead, they transported the boys to police headquarters to investigate "their identity." (*COPPAR* Record 485).[19] While there, one of the boys was struck on the chin by a police officer who stated he "did not like the boys' attitude." The youth was later charged with striking the policeman. The two youths were held for over three hours before one of them was permitted to see his mother. They were ultimately released some six hours after they were first picked up. After hearing evidence concerning this incident, Judge Fullam stated that there "can't possibly be any dispute about the virtual kidnapping of these two men." (*COPPAR* Record 507).

In the Locke incident (A 107a-9a, 357 F. Supp. at 1310-11), a five-month pregnant woman, who was dressed

19. One of the officers involved in the incident testified that he believed he had the right under police procedures to take an individual to the police station because the person did not have identification (*COPPAR* Record 488). With respect to this incident, he admitted under questioning by Judge Fullam that he knew where Johnson lived:

> THE WITNESS: The two males were there when we first pulled up. Nobody else was there. Then, as I stated, Johnson became very loud and the neighbors started to come out of the house, and as we were leaving, a woman came out of the same address.
>
> THE COURT: Did that cause you to perhaps suspect that that was where he lived?
>
> THE WITNESS: That is correct.
>
> THE COURT: So you didn't need to take him into the station to find out his identity, did you?
>
> THE WITNESS: The boy wish [*sic*] him refused to give me identification, too, at this time. (*COPPAR* Record 486-87).

only in a nightgown,[20] was struck by police officers in the body with nightsticks, dragged by the hair, and pushed down a flight of stairs. All this occurred because she began to scream upon viewing a number of police officers break down her front door, push her aside, seize her husband, drag him down the stairs, and strike him in the head with a nightstick causing an open wound. The justification for the police actions in this incident was the disputed allegation that Mr. Locke had thrown water on a police officer. Somewhat charitably Judge Fullam characterized this incident as involving "a rather complete loss of control on the part of the police." (A 108a, 357 F. Supp. at 1311).

In the Mark Soto incident,[21] a police officer "apparently believing" that Soto had attempted to grab his gun, proceeded to strike him with the butt of his gun. When the fifteen year old tried to get away from this attack, the officer struck him again with his gun, knocking him to the ground. The assault on the boy continued as two other police officers arrived and proceeded to hit the boy in the head with both their nightsticks and feet. As a result of injuries suffered during this attack, Soto required hospital treatment, and received a number of stitches for a head wound.

In yet another incident,[22] a neatly dressed black male who had a Ph.D. in pharmacology was stopped by police while walking on the sidewalk near his home. When he did not produce any identification, and questioned the police as to why he had been stopped, he was placed under

20. The police arrested the Lockes and transported them to division headquarters without permitting Mrs. Locke to put on additional clothing. By reason of her condition and scanty attire, Mrs. Locke was the target of rude and offensive remarks from policemen (A 109a, 357 F. Supp. at 1311).

21. A 111a-13a, 357 F. Supp. at 1312-13.

22. Raymond Ragland, A 89a-90a, 357 F. Supp. at 1302.

arrest, though not told why. Thereafter he was frisked, and when he attempted to pull his hand away while being handcuffed, he was struck on the arms, spine, knuckles and stomach with a nightstick. He was held by the police overnight, during which time he was charged with disturbing the peace, resisting arrest and assault and battery on a police officer. Several weeks later these charges were dismissed. The victim in this incident wrote a letter of complaint to the Police Commissioner, and gave statements to the FBI and a staff inspector of the Philadelphia Police Department. He never heard from the FBI and the only communication he received from the Police Department was in response to a call by his attorney who was informed that no action would be taken.

In the Brown incident (A 117a-18a, 357 F. Supp. at 1315-16), four police officers knocked on the Brown's door and, without waiting for a response, broke it down and thoroughly ransacked the house, emptying drawers and closets and leaving the house in disarray. Three officers invaded Mrs. Brown's bedroom on the second floor where she had just arisen from a nap. Mrs. Brown was dressed only in her underwear, and the police ordered her to remain standing while they searched her bedroom. Only after some delay was Mrs. Brown provided with clothing. The police had been looking for narcotics but found no drugs or evidence of use of drugs by the Browns.

The District Court relied on the "extensive evidence of specific instances of violations of constitutional rights" presented in *COPPAR* in determining that some relief was necessary to eliminate future, predictable violations (A 183a). With the exception of two minor *COPPAR* incidents,[23] (neither of which the District Court relied on)

23. Charles Blackman, A 87a-88a, 357 F. Supp. at 1301; Robert Nicholas, A 88a, 357 F. Supp. at 1301-2.

the remaining twenty-seven incidents occurred between May 18, 1970[24] and October 23, 1970,[25] a span of but five months. In light of the relief granted, it is significant to note that the frequency of the incidents was *higher* during the period when the temporary restraining order in *COPPAR* was in effect.[26] Four of the six incidents recounted above occurred when the restraining order was in effect.

The District Court also examined certain relevant statistical information concerning arrests and disposition of cases which tended to confirm the patterns demonstrated at trial. The testimony showed that in a number of incidents where police made unconstitutional arrests or used excessive force, the victim was charged with disorderly conduct, resisting arrest or assault and battery on a police officer.[27] Almost always, no conviction resulted. The statistics revealed that in the eighteen month period prior to July 1, 1970, 2,709 cases were disposed of in which the defendant was charged with resisting arrest or assault and battery on a police officer. In 78 percent of these cases, the defendant was exonerated, 67 percent before trial (A 120a, 357 F. Supp. at 1316).

In at least five[28] of the incidents presented in the two cases, the trial court found that the defendants themselves

24. Raymond Ragland, A 89a-90a, 357 F. Supp. at 1302.

25. Irene Thompson, A 119a, 357 F. Supp. at 1316.

26. There were sixteen incidents about which testimony was given which occurred during the 3½ month period preceeding the September 4, 1970 issuance of the temporary restraining order. Twelve incidents of which evidence was presented occurred in the 1½ month span following its issuance.

27. *E.g.*, Gerald Goode, A 75a-78a, 357 F. Supp. at 1295-97; Raymond Ragland, A 89a-90a, 357 F. Supp. at 1302; Boccuto & Dignetti, A 114a-16a, 357 F. Supp. at 1314.

28. Joseph Reas, A 83a-84a, 357 F. Supp. at 1299-1300; Louise Reed, A 84a-85a, 357 F. Supp. at 1300; "Jew Bastard" Incident, A 85a-86a, 357 F. Supp. at 1300; Raymond Ragland, A 89a-90a, 357 F. Supp. at 1302; Kenneth Lassiter, A 91a-93a, 357 F. Supp. at 1303-4.

were put on notice as to the police misconduct. Complaints were also made to supervisory personnel concerning at least five other instances of police misconduct.[29] In one incident, defendant Rizzo was a direct participant in a course of conduct which resulted in unreasonably high bail being set for sixteen persons.[30] With respect to the evidence concerning complaints about Officer DeFazio, the court stated, "It is clear that numerous oral complaints were received by DeFazio's superiors, relating to his conduct both on and off duty, and that no written record of these complaints was made, and no action taken." (A 86a, 357 F. Supp. at 1300).

Evidence as to Predictable Patterns of Police Abuse and the Defendants' Policy of Official Indifference Thereto.

We note first that the defendants in both cases produced *absolutely no defense testimony* to contradict the findings and conclusions of the District Court with respect

29. Gerald Goode, A 77a, 357 F. Supp. at 1296; Helen Peurifoy, A 95a, 357 F. Supp. at 1304; Jerry Serrano, A 113a, 357 F. Supp. at 1313; Edward Smalley, A 118a, 357 F. Supp. at 1316; Irene Thompson, A 119a, 357 F. Supp. at 1316.

30. Black Panther Party Incidents, A 99a-101a, 357 F. Supp. at 1307. In the Black Panther Bail Incident, the defendants were initially held without being charged, arraigned or having bail set. Attorneys for the defendants thereupon applied for a writ of habeas corpus in state court, and received an order directing that the defendants be released on $500 bond for a hearing to be held the following morning.

When the attorneys presented this order to the Municipal Court judge sitting on regular assignment at the Police Administration Building, she refused to comply with it, and, after conferring with defendant Rizzo, she left for the day. Shortly thereafter, a Common Pleas Court judge, at the personal request of defendant Rizzo, arrived at the court and began sitting on the bench. This judge "refused to consider or apply the prescribed standards for fixing bail" (A 100a, 357 F. Supp. at 1307) and set bail at $100,000 for each defendant.

to patterns of police abuse and defendants' policy of official indifference.[31] The evidence presented by plaintiffs to supplement their testimony as to individual incidents consisted of fact witness testimony, expert testimony, and properly authenticated corroborative governmental and private research studies and reports concerning common patterns of police abuse, the defendants' acquiescence in and toleration of such abuses and the concomitant absence of remedial efforts directed thereto. The evidence as to official indifference revealed the following patterns: non-registering of complaints by the Police Department when first made; "run around" or lack of response given complainants;[32] inadequate investigation by police personnel charged with this responsibility;[33] failure to compile complaints concerning particular officers over a period of time causing both a lack of regard for complaints when officers are rated and the continued exposure of citizens to police officers whose propensity to abuse can clearly be

31. The court below somewhat generously found that "the defendants produced some countervailing evidence" as to the larger, institutional issues raised in these lawsuits (A 67a, 357 F. Supp. at 1291). That evidence came not by way of defense witness testimony, but rather by reference to the existing Police Department Directive 127 which set forth procedures for handling citizen complaints against the police. The version of the Directive referred to is set forth at A 143a-45a. As the findings of the District Court make clear, the remedial police procedures currently in effect are both insufficient on their face, and more honored in their breach.

32. *E.g.*, Raymond Ragland complaint, (A 90a, 357 F. Supp. at 1302); Kenneth Lassiter complaint, (A 93a, 357 F. Supp. at 1303-4); Mary Rouse complaint in connection with the Soto and Serrano incident, (A 113a, 357 F. Supp. at 1313); Edward Smalley, (A 118a, 357 F. Supp. at 1316); Irene Thompson complaint, (A 119a, 357 F. Supp. at 1316).

33. *See, e.g.*, Schwartz, *Complaints Against the Police: Experience of the Community Rights Division of the Philadelphia District Attorney's Office*, 118 U. Pa. L. Rev. 1023, 1025, 1027-34 (1970). Professor Schwartz testified as part of plaintiffs' case in *Goode*.

documented;[34] inadequate Police Board of Inquiry procedures,[35] which, when coupled with lack of departmental regulations proscribing certain patterns of police abuse, have no discernible impact on abusive police practices; threats, intimidation, and, in some instances, arrest for disorderly conduct or worse of citizens who go to police stations to register complaints or, even, register criticism

34. Whenever a citizen writes a letter of commendation about a particular police officer, it is placed in the officer's personnel file. However, when a citizen writes a letter of complaint, there is no similar procedure (A 70a, 357 F. Supp. at 1293). Thus, when an investigating officer, seeking information about an officer's background and record examines the personnel folder, he receives a distinctly inaccurate impression.

For example, when Staff Inspector Charles P. Dittmer investigated the Gerald Goode incident and Officer DeFazio's involvement in it, he examined DeFazio's personnel folder to see if the officer was a disciplinary problem (*Goode* Record 350-51). It is usual practice to investigate the underlying facts of a disciplinary record found in the personnel file (*Goode* Record 351). Since the lack of a record of the many complaints against DeFazio (see below) led Inspector Dittmer to the conclusion that DeFazio was not a disciplinary problem, Dittmer made no further investigation of DeFazio and did not include any reference to DeFazio's record in his report to the Police Commissioner (*Goode* Record 343, 349, 397; Exhibit P-20).

Meanwhile, as Officer DeFazio's record of abuses against citizens grew *worse*, his rating by superiors grew *better*. Overall ratings on April 7, 1966, July 14, 1966 and May 21, 1967 were each satisfactory (*Goode* Record 368). As a result of a Police Board of Inquiry hearing held November 8, 1967, Officer DeFazio received five days suspension for his conduct in connection with the "Jew Bastard" incident and the Louise J. Reed incident, which occurred on September 9, 1967, and October 3, 1967, respectively (A 84a-86a, 357 F. Supp. at 1300). Yet on May 19, 1968, Officer DeFazio was given an overall rating of superior. Following this rating, a neighbor of Officer DeFazio wrote defendant Rizzo on September 9, 1968, (*Goode* Record 468, 469-70; Exhibit P-24), in order to file a complaint about Officer DeFazio's conduct. In addition, Mrs. Eleanor Reas complained in early May, 1969, to the Police Department (*Goode* Record 597). In spite of the foregoing, Officer DeFazio again received a superior rating on June 1, 1969.

35. Indeed it appears that defendants have conceded that the complaint and disciplinary procedures are inadequate in dealing with police violations of constitutional rights (Pet. Br. 39).

of police at the scene of an incident;[36] and the complete lack of any effective or meaningful remedy for constitutional violations by police through existing mechanisms within the courts.[37]

This evidence as to the workings of the Police Department was supplemented by evidence concerning the inability of other Philadelphia governmental (District Attorney, Human Relations Commission, former Police Advisory Board) and private agencies adequately to remedy the problem. The Human Relations Commission stopped accepting complaints about police misconduct because of the refusal of the Police Department to cooperate with investigations. The court found that the District Attorney's office was ineffective in prosecuting police officers charged with having committed crimes against citizens because of the inherent conflict of interest present. In many cases where a complaint is made against a police officer, criminal charges arising out of the same incident are pending against the complainant. The same Assistant District Attorney may be responsible for some aspects of both prosecutions. Furthermore, the District Attorney must rely on the Police Department for investigation of criminal activity by individual policemen. The practice of dismissing charges against a complainant in exchange for his agreement not to pursue his complaint against the police officer occurs frequently. There was also evidence presented demonstrating the inadequacy of damage actions in the courts to provide a solution to the problem. *See* A 71a-73a, 126a-27a, 357 F. Supp. at 1293-94, 1319; Schwartz, *supra*, n. 33.

36. *E.g.*, arrest of Gerald Goode, (A 76a-77a, 357 F. Supp. at 1295-96); arrest of Helen Peurifoy, (A 94a, 357 F. Supp. at 1304.)

37. *E.g.*, Testimony of Bernard L. Segal, (*COPPAR* Record 904-21); Testimony of Mercer D. Tate, (*Goode* Record 655-60).

As the incidents indicate, these institutional failures have concrete consequences for numerous citizens in Philadelphia. For example, Gerald Goode required several stitches as a result of an attack upon him by Officer DeFazio, about whom "numerous oral complaints" previously had been made. This incident would not have occurred if corrective measures had been taken earlier. *See* n. 34, *supra*. Thus, the propriety of the trial court's injunctive relief must be measured both against the background of constitutional violations of "unacceptable frequency," (A 186a), and the need to devise a remedy in light of the abdication of responsibility by defendants.

Findings of the District Court.

Based on the record as detailed above, the District Court made extensive findings and concluded that violations of rights by police take place with such frequency that "they cannot be dismissed as rare, isolated instances; and that little or nothing is done by the city authorities to punish such infractions, or to prevent their recurrence." (A 126a, 357 F. Supp. at 1319). We note that defendants' Brief, like the Petition for Writ of Certiorari before it, makes no challenge under Rule 52 of the Federal Rules of Civil Procedure or other reference to the fact findings of the District Court. These unchallenged findings are found in the Appendix (A 65a-130a).

The court found that two types of individuals were most likely to be subjected to arrests where no probable cause existed: "poor blacks, and individuals who question or protest the initial police contact." (A 122a, 357 F. Supp. at 1317). The court concluded on the basis of the voluminous record that violations of legal and constitutional rights of citizens by police are most widespread in the following areas of police activity:

> "(1) Arrests 'for investigation'; (2) Treatment of citizens who question or criticize what the police are doing in a particular instance; (3) Charges of resisting arrest, when the arrest was unlawful in the first place; (4) Extreme overreaction to actual or reported assaults upon policemen." (A 124a, 357 F. Supp. at 1318).[38]

Having concluded that plaintiffs were entitled to relief remedying the recurring and predictable abuses found to exist, the trial court reviewed existing remedies for preventing such abuses. Among the remedies evaluated were the existing police procedures for processing and adjudicating citizen complaints and for enforcing police discipline. The District Court found they were "totally inadequate" to prevent violations of citizens' rights in that: (1) the procedures were geared to handle infractions of police regulations but were not framed to cover violations of citizens' constitutional rights; (2) complaints were handled on a "chain of command" basis which discouraged fair handling of citizen complaints; (3) there was no adequate opportunity for the complainant to present his case to an objective tribunal; (4) the outcome of the proceedings was not disclosed; and (5) there was a tendency to minimize consequences of proven police misconduct (A 70a, 124a, 128a, 357 F. Supp. at 1292-93, 1318, 1320). As one predicate for relief, the District Court found that:

> "It is the *policy of the department* to discourage the filing of such complaints, to avoid or minimize the

38. The following incidents are examples of the types of situations in which abuses occurred: (1) investigative arrests, Raymond Ragland, A 89a-90a, 357 F. Supp. at 1302; (2) citizens' criticism, Helen Peurifoy, A 93a-95a, 357 F. Supp. at 1304; (3) unlawful resisting arrest charges, Roy Lee Shaw, A 74a-75a, 357 F. Supp. at 1294-95; (4) extreme overreaction to reported assaults on police, Locke & Perry, A 107a-9a, 357 F. Supp. at 1310-11.

consequences of proven police misconduct, and to resist disclosure of the final disposition of such complaints." [A 124a, 357 F. Supp. at 1318 (emphasis added)].

Although it concluded plaintiffs and their class were entitled to equitable relief, the District Court emphasized that it had not decided that plaintiffs have a constitutional right to improved departmental procedures for handling citizen complaints against police. Rather, the court found that

> ". . . under existing circumstances, violations of constitutional rights by police do occur in an unacceptably high number of instances; that, in the absence of change in procedures, such violations are likely to continue to occur; and that revision of procedures for handling civilian complaints is a necessary first step in attempting to prevent future abuses." (A 130a, 357 F. Supp. at 1321).

The District Court entered an order requiring defendants

> ". . . to submit to this Court for its approval a comprehensive program for improving the handling of citizen complaints alleging police misconduct, in conformity with the views expressed in the Opinion of this Court filed this date." (A 131a-32a, 357 F. Supp. at 1322).

The Final Judgment.

Pursuant to the District Court's order, defendants submitted to the court on April 12, 1973 a proposed order which was in the form of an internal police department directive. The proposed order consisted of a revised version of an existing internal directive (Philadelphia Police Department Directive 127, dated March 31, 1967) detailing procedure for handling citizen complaints against police which defendants contended remedied the inadequacies found by the court.[39]

As permitted by the court's order (A 131a-32a, 357 F. Supp. at 1322), plaintiffs submitted a counterproposal which was drafted in the same form as defendants' proposed order (A 147a-62a). Plaintiffs' counterproposal adhered as closely as possible to the provisions of Directive 127 insofar as the routing of documents and the imposition of responsibility were concerned but remedied the defects and inadequacies of defendants' proposal with respect to, *inter alia*, failure to insulate complaint procedure from chain of command pressures, absence of a clear designation of responsibility for investigation, and absence of a statement of minimum elements the investigation must include. These deficiencies, and others detailed in Plaintiffs' Memorandum in Response to Defendants' Plan (A 163a-67a), were measured against the standards set forth by the court in its opinion (A 129a, 357 F. Supp. at 1321).

During the five months following the filing of the court's opinion and order, several conferences were held with the District Court in an attempt to develop a satisfactory plan. Although defendants made clear that they objected to the entry of any order on the ground the District Court lacked the power to order a revision of police procedures, defendants at *no* time during the hearings or subsequent conferences objected to, or presented any evi-

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39. What defendants described as a "completely revised" Directive 127 was submitted as defendants' proposed order (A 133a); it is set forth at A 135a-42a. The original version of Directive 127 is set forth at A 143-45a.

dence concerning, the proposals which were submitted by plaintiffs at the direction of the District Court.

The District Court amended the proposals before it (A 178a-80a) and issued its final judgment[40] on October 5, 1973 which included a suggested form of a directive setting forth the complaint procedures to be followed including such matters as: (1) preparing and distributing appropriate forms for the submission of complaints; (2) prompt and adequate investigation; (3) adjudication by an impartial body insulated from command pressures; and (4) fair opportunity for both complainants and police officers to present their case, followed by notification to the parties of the outcome. The relief ordered tracked the deficiencies in the present system which the District Court found to exist. Significantly, the District Court noted that "the resolution of all of the disputed items [concerning the form of the final judgment] was more nearly in accord with the defendants' position than the plaintiffs' position." (A 190a).

Judge Fullam, throughout the hearings, post-hearing negotiations and, ultimately, the entry of the final judgment, consistently demonstrated a strong concern for minimizing any intrusions into or disruptions of the Philadelphia Police Department.[41] Indeed, in response to an earlier suit seeking injunctive relief against the police, Judge Fullam had declared, "[A]ny attempt at broad-spectrum injunctive relief should be avoided. Courts are simply not equipped to supervise the day-to-day operations of police officers by injunction." *Hughes v. Rizzo*, 282 F. Supp. 881, 885 (E. D. Pa. 1968).

40. App. Cert. Pet. 20a-23a. On October 5, 1973, the District Court also issued an opinion awarding attorney's fees to counsel for plaintiffs (A 181a-86a). The Court of Appeals vacated and remanded this award (App. Cert. Pet. 19a, 506 F. 2d at 551); review of this portion of the Court of Appeal's order has not been sought in this Court.

41. *See, e.g., Goode* Record 10-11; A 127a, 130a, 357 F. Supp. at 1320, 1321.

The relief granted by the court was viewed as a necessary step for "the prevention of recurring constitutional violations." (A 190a). With respect to its guidelines, the court stated that they were "consistent with generally recognized minimal standards for improving police-community relations, . . . impose no substantial burdens on the Police Department, . . . pose no threat to vigorous law enforcement, [and] afford protection to the accused policeman, as well as to the complaining civilian." (A 130a, 357 F. Supp. at 1321).

The Court of Appeals.

On November 1, 1974, the Court of Appeals for the Third Circuit, in an opinion by the Honorable Joseph F. Weis, Jr., affirmed the District Court's grant of injunctive relief. Based on its own independent "review of the lengthy record in this case," the Court of Appeals concluded that "there was an adequate evidentiary record to support the findings of the district court that violations of constitutional rights by the Philadelphia police occurred in an unacceptably high number of instances and that in the absence of change in procedures such violations are likely to recur." (App. Cert. Pet. 10a-11a, 506 F. 2d at 547). The Court of Appeals approved the relief ordered, noting:

> "The district court's order granting relief is limited and moderate in tone indicating its faith in the ability and willingness of the police department to investigate and correct the transgressions of its errant members. Despite the assertions of the defendants, the court is not thrusting itself into the day to day operations of the police department—a situation which

we agree would be inadvisible and inappropriate in the circumstances of this case. *Cf. Lankford v. Gelston*, 364 F. 2d 197 (4th Cir. 1966). Indeed, the procedures which the district court required be implemented by the police department for the receipt, investigation, and disposition of civilian complaints are fully in accord with the American Bar Association Standards Relating to the Urban Police Function, which were unanimously approved by the Executive Committee of the International Chiefs of Police in December, 1972." (App. Cert. Pet. 11a-12a, 506 F. 2d at 547-48).

Defendants' petition for rehearing en banc was denied by the Court of Appeals on December 6, 1974 (A 192a).

SUMMARY OF ARGUMENT.

I. Citizens have a fundamental right to be free from persistent patterns of unconstitutional, illegal and unjustified exercises of police power. Injunctive relief is an appropriate remedy to protect that right where, as in the present case, plaintiffs convincingly established and the court found both a pattern of frequent and recurring violations by police and an official policy of disregarding or minimizing such infractions.

Defendants, the municipal officials charged with the supervision, control and discipline of the Philadelphia Police Department, are responsible for adequately protecting citizens from unconstitutional police conduct. Defendants' acquiescence in unconstitutional conduct through failure to maintain adequate procedures for detecting and preventing recurrent police abuses is actionable under 42 U. S. C. § 1983, and the federal courts have the duty to grant effective relief to remedy such violations.

II. The federal courts have wide discretion to fashion effective injunctive relief directed at preventing future violations of rights. The relief ordered in the present case, establishment of adequate internal police procedures for the receipt, investigation and disposition of citizen complaints against the police, was appropriate in light of the voluminous and detailed record of police abuses and defendants' indifference thereto. This indifference is reflected in the totally inadequate existing procedures for controlling violations of rights by police. The relief granted remedied the deficiencies in the present police procedures found by the court to exist and appeared to offer the most effective method of reducing police violation of constitutional rights in the future.

Other forms of relief such as damage actions against the police were considered by the District Court and properly rejected as being ineffective to prevent future violations of rights and inadequate to "compensate" victims. Similarly the entry of a prohibitory injunction was rejected in light of the difficulty of framing clear and precise orders to cover the variety of situations in which the police must act and the cumbersome mechanism of contempt proceedings for enforcing such orders as was experienced by the District Court in connection with the temporary restraining order it entered at the outset of the *COPPAR* case.

The relief granted is to be administered solely by the police, thereby minimizing any intrusion into police operations. The relief granted was limited and moderate and protects the public interest by insuring that the police both enforce and observe the law with equal vigor. This Court should affirm the judgment of the Court of Appeals for the Third Circuit with respect to the grant of injunctive relief.

ARGUMENT.

I. Equitable Relief Was Necessary and Appropriate to Remedy Both a Pattern of Recurring and Predictable Violations by Police of Citizens' Constitutional Rights and the Concomitant and Systematic Failure of Municipal Officials to Remedy or Prevent Such Abuses.

Based on the voluminous and detailed record before it, the District Court found the totality of the evidence *"convincingly"* established that violations of the legal and constitutional rights of citizens occur "entirely too frequently," that such violations "cannot be dismissed as rare, isolated instances," that it is the *"policy"* of the department to "avoid or minimize the consequences of proven police misconduct" and that "little or nothing is done by the city authorities to punish such infractions, or to prevent their recurrence." [A 123a-24a, 126a, 357 F. Supp. 1318, 1319 (emphasis added)]. Predicating its final order upon the predictable continuation of violations and the inadequacy of existing remedies, the court below ordered changes to be made in procedures for handling citizen complaints against the police in order to "prevent further abuses." (A 128a, 357 F. Supp. 1320).

In their Petition for Certiorari and Brief, defendants do not challenge the trial court's findings which were affirmed by the Court of Appeals.[42] Rather, defendants,

42. This Court has set forth the following rule with respect to findings of fact concurred in by two lower courts:

> "A court of law, such as this Court is, rather than a court for correction of errors in fact finding, cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error." *Graver Tank & Mfg. Co. v. Linde Air Products Co.*, 336 U. S. 271, 275 (1949).

This rule is particularly applicable in the present case where defendants do not challenge the trial court's findings of fact at all.

who admittedly are responsible for controlling and preventing police violation of citizens' rights (Pet. Br. 4-5; n. 7, *supra*), and who have been found to have done little or nothing to prevent or punish such violations, contend in this Court that they cannot be held accountable for their systematic indifference to recurring violations (Pet. Br. 20-22, 35-36). Although the court found that they have failed to protect citizens from police violation of rights, defendants argue that the federal courts cannot order them to do so for this would "interfere" with the existing operations of the Police Department and constitute an abuse of federal injunctive power (Pet. Br. 23, 29-35). Finally, although plaintiffs have established the existence of predictable patterns of violations of rights, defendants maintain that adequate remedies at law exist and therefore a federal court cannot issue an injunction directed at preventing future abuses (Pet. Br. 40-44). Plaintiffs submit defendants' arguments are without merit and should be rejected by this Court.

A. The Trial Court Record Established and the District Court Found a Pattern of Recurring and Predictable Violations of Plaintiffs' Federally Secured Rights.

In granting the requested relief, the District Court was clearly mindful that "the deprivation of . . . rights . . . secured by the Constitution" is an obvious and indispensable predicate for the exercise of judicial power. 42 U. S. C. § 1983. The right plaintiffs sought to vindicate is the fundamental right of a people living in a democratic society to be free from repeated patterns of unconstitutional, illegal and unjustified exercises of police power. The right to be protected from such violations is simply a corollary right, and the need for protection from such

abuses is the predicate for injunctive relief. Plaintiffs' right to some form of equitable relief would be established, in other words, even in the absence of a deliberate departmental policy not to adequately supervise and discipline individual police officers. The fact that the trial court found such a departmental policy to exist (A 124a, 357 F. Supp. at 1318) merely strengthens plaintiffs' claim, particularly as it relates to the proper form of equitable relief.

The authors of the Fourteenth Amendment, and of the preceding and subsequent Civil Rights Acts, viewed prevention of violence and protection of personal security as the first and foremost duties of government.

> "The duty of the Government and the citizen is reciprocal; the obligation is mutual. The Government owes to its citizen protection; the citizen owes to the Government obedience and support . . . ." Cong. Globe, 39th Cong., 1st Sess. 2918 (statement of Senator Willey during debate concerning adoption of Fourteenth Amendment).[43]

43. *See* the virtually identical statement of Senator Stewart, *id.* 2799.

This view of government was shared by the Amendment's opponents. Thus, Senator Cowan, in opposing the addition of a definition of "citizenship" (the first sentence of the Amendment as eventually passed) opined: "So far as the courts and the administration of the laws are concerned, I have supposed that every human being within [State] jurisdiction was in one sense of the word a citizen, that is, a person entitled to protection . . . ." *Id.* 2890.

Most of the supporters of the Fourteenth Amendment had, a few months earlier in the session, voted for the Civil Rights Act of 1866 to implement the Thirteenth Amendment. 16 Stat. 141. Designed to guarantee to blacks the rights which differentiate a free man from a slave, the Act secured: "the full and equal benefit of all laws and proceedings for the security of persons and property." 42 U. S. C. § 1981. The Act's purpose was to assure to blacks what its authors believed to be the three fundamental rights which government was established to protect (and prohibited to

Indeed, living in a century of laissez-faire economic thought, many of the sponsors of the Fourteenth Amendment and the Civil Rights Act of 1871 [44] considered protection of personal security to be virtually the only purpose of government. It is not likely that its authors intended to exclude from that constitutional provision equality in the enjoyment of what they considered to be the primary benefit dispensed by government.

The evidence in the present cases established that defendants failed to protect plaintiffs and the class they represent from numerous acts by police which have repeatedly been held to constitute violations of individual rights. Among the violations which the District Court found were illegal arrests and subsequent unlawful imprisonments,[45] *e.g.*, *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U. S. 388 (1971); *Basista v. Weir*, 340 F. 2d

43. (Cont'd.)
infringe): in the words of Kent and Blackstone, ". . . 'the right of personal security, the right of personal liberty, and the right to acquire and enjoy property' . . ." *Id.* 1117, 1118, statement of the Act's House sponsor, Representative Wilson. At *id.*, 1757, its Senate sponsor quoted the same language in successfully urging its enactment over a presidential veto. The Act did not guarantee "political rights" (*e.g.*, voting, jury service), but was limited to what its authors believed to be the basic rights of freemen—"protection of the courts and to have justice administered to all." *See, e.g.*, colloquy between Senators McDougall and Trumbull at *id.* 476.

Senator Pratt's analysis of the citizens' right to protection is apt:

> "To what end, sir, are taxes laid, many and burdensome; for what purpose is a costly machinery of government, *but to afford protection* to men in the peaceful pursuit of their occupations . . . ." Cong. Globe, 42d Cong. 1st Sess. 504 (emphasis added).

For other such statements from the 1871 debates see *id.* 322 (Representative Stoughton); *id.* 691 (Senators Edmunds and Blair).

44. Act of April 20, 1871, 17 Stat. 13, which included the provision now embodied in 42 U. S. C. § 1983 (1970).

45. *E.g.*, Gerald Goode, A 75a-78a, 357 F. Supp. at 1295-97; Johnson & Simon Incidents, A 105a-6a, 357 F. Supp. at 1309-10.

74 (3rd Cir. 1965); the use of excessive force and unconstitutional assaults,[46] *e.g.*, *Screws v. United States*, 325 U. S. 91 (1945); and illegal searches,[47] *e.g.*, *Beck v. Ohio*, 379 U. S. 89 (1964); *Monroe v. Pape*, 365 U. S. 167 (1961). *United States ex rel. Covington v. Coparo*, 297 F. Supp. 203 (S.D.N.Y. 1969).

Where, as in the present case, plaintiffs convincingly established both "a pattern of frequent police violations of rights" [48] (A 124a, 357 F. Supp. at 1318), and a departmental "policy" of disregarding or minimizing such infractions (A 124a, 126a, 357 F. Supp. at 1318, 1319), the federal courts have recognized it is their duty to insure the elimination of such abuses.[49] Moreover, injunctive relief has traditionally been viewed as a proper remedy in cases presenting unconstitutional police activity.[50]

46. *E.g.*, Roy Lee Shaw, A 74a-75a, 357 F. Supp. at 1294-95; Locke & Perry Incidents, A 107a-9a, 357 F. Supp. at 1310-11.

47. *E.g.*, Ballow Incident, A 78a-79a, 357 F. Supp. at 1297; Brown & Smalley Incidents, A 117a-18a, 357 F. Supp. at 1315-16.

48. "The number of incidents necessary to show a pattern or practice depends upon the nature of the right protected and the nature of the ordinary violations of such right." *United States v. Mintzes*, 304 F. Supp. 1305, 1314 (D. Md. 1969). "'Pattern or practice' have their generic meanings", and must refer to events which are not "isolated or accidental or peculiar", but rather events which "happened in the regular procedures followed by the state officials concerned." *United States v. Mayton*, 335 F. 2d 153, 159 (5th Cir. 1964); *see also Bishop v. Stoneman*, 508 F. 2d 1224, 1226 (2d Cir. 1974); *United States v. Gilman*, 341 F. Supp. 891, 905 (S. D. N. Y. 1972).

49. "[W]here federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief [footnote omitted]." *Bell v. Hood*, 327 U. S. 678, 684 (1946); *see also Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U. S. 388, 392 (1971).

50. *See, e.g., Hague v. CIO*, 307 U. S. 496 (1939); *Sullivan v. Murphy*, 478 F. 2d 938, 965-66 (D. C. Cir.), *cert. denied*, 414 U. S. 880 (1973); *Lewis v. Kugler*, 446 F. 2d 1343, 1350-52 (3d Cir. 1971); *Belknap v. Leary*, 427 F. 2d 496, 498-99 (2d Cir. 1970);

> "Where, as here, there is a persistent pattern of police misconduct, injunctive relief is appropriate." *Allee v. Medrano*, 416 U. S. 802, 815 (1974).

Plaintiffs introduced evidence as to common patterns of police abuse and departmental indifference to and toleration of such abuses,[51] all of which led the District Court to conclude that violations of citizens' rights by police "occur, with such frequency that they cannot be dismissed as rare, isolated instances." (A 126a, 357 F. Supp. at 1319). The evidence of official indifference and toleration of such police crimes and ineffectiveness of other governmental and private agencies to remedy the problem demonstrated that such conduct would continue in the future thereby establishing both the need and appropriateness of plaintiffs' request for injunctive relief. *See, e.g., Zenith Corp. v. Hazeltine*, 395 U. S. 100, 130 (1969); *United States v. W. T. Grant Co.*, 345 U. S. 629, 633 (1953).

During twenty-one days of hearings, the District Court heard testimony concerning these matters from approximately 250 witnesses, over 100 of whom were police officers. This record before the trial court certainly contained a sufficient base of information from which to

50. (Cont'd.)
Schnell v. City of Chicago, 407 F. 2d 1084, 1086 (7th Cir. 1969); *Lankford v. Gelston*, 364 F. 2d 197, 201-3 (4th Cir. 1966).

> "The very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights—to protect the people from unconstitutional action under color of state law, 'whether that action be executive, legislative or judicial.' [citation omitted]. In carrying out that purpose, Congress plainly authorized the federal courts to issue injunctions in § 1983 actions, by expressly authorizing a 'suit in equity' as one of the means of redress." *Mitchum v. Foster*, 407 U. S. 225, 242 (1972).

51. *E.g., Goode* Record 285-88, Exhibit P-19; *COPPAR* Record 928, 1052-83.

properly reach conclusions concerning the likelihood of continued violations based on past patterns of conduct. Moreover, the evidence produced by plaintiffs must be evaluated in light of the fact that victims of police abuses are often difficult to identify and reluctant to testify. As found by the District Court, the Police Department discourages the filing of citizen complaints against police and tends to minimize and seek withdrawal of complaints which are filed (A 69a-71a, 357 F. Supp. at 1292-93; *see also* A 95a, 357 F. Supp. at 1304). Also, in many cases where a complaint is made against a police officer, criminal charges arising out of the same incident are lodged against the complainant. The *quid pro quo* for a dismissal of the criminal charges is the complainant's agreement not to press the complaint against the police (A 73a, 357 F. Supp. at 1294).

The trial court found and the Court of Appeals agreed that the evidence convincingly established the recurring and predictable nature of police violations of rights. Plaintiffs have more than adequately established the threat of continued violations sufficient to warrent injunctive relief from the federal courts.

B. The Trial Court Record Established and the District Court Found That Municipal Officials Responsible for the Control and Discipline of the Philadelphia Police Department Failed to Remedy or Prevent Unconstitutional Activities by the Police.

Defendants contend that equitable relief was not appropriate in these cases because the District Court failed to find "any unlawful conduct attributable to [defendants]." (Pet. Br. 3). The record and findings of the District Court simply do not support defendants' argument.

Defendants ignore the fact that their predecessors in office admitted in these actions that the official positions held by defendants carry with them the responsibility for law enforcement within the City of Philadelphia including the supervision, control and discipline of the Police Department (A 13a, ¶¶ 7-11; 25a, ¶¶ 7-11; 38a-39a, ¶¶ 13-17; 62a, ¶ 8). Defendants also ignore the fact that plaintiffs in both cases alleged and sought relief from defendants' toleration of and failure to take adequate action against violations by police officers of the constitutional and legal rights of plaintiffs and the class of all Philadelphia residents represented by plaintiffs. (*See, e.g.*, A 12a-14a, ¶¶ 5, 7-18; A 45a, ¶ 36; A 66a-67a). Finally, defendants ignore the evidence and specific findings of the District Court with respect to defendants' involvement in and knowledge of certain incidents in these cases,[52] including failure to take any action with respect to disciplining errant officers, and defendants' policies and practices which encourage the pattern of abuses perpetrated by individual officers.[53]

While it is true that the District Court did not find "any *conscious* departmental policy of racial bias, or of discriminatory enforcement on racial lines," it did conclude the defendants condoned and failed to take action against an officer's manifestation of racial prejudice in the performance of his police duties (A 124a, 357 F. Supp. at 1318) (emphasis added).[54] The trial court also found that poor blacks as a class are particularly likely to be

52. *See* A 77a, 83a-86a, 89a-90a, 91a-93a, 95a, 113a, 118a, 119a, 357 F. Supp. at 1296, 1299-1300, 1302, 1303, 1304, 1313, 1316.

53. *See* A 69a-71a, 124a, 126a, 128a, 357 F. Supp. at 1292-93, 1318, 1319, 1320.

54. "The presence of racial prejudice on the part of an individual police officer, manifested in the performance of his police duties, is unlikely to be reflected adversely in the performance ratings accorded him by his superiors." (A 124a, 357 F. Supp. at 1318).

subject to arrest and detention without probable cause (A 122a, 357 F. Supp. at 1317). Moreover, we are concerned here with de facto consequences, not motives or specific intent.[55] The defendants are clearly responsible, without regard to their motives, for the natural consequences of their acts and omissions. *Monroe v. Pape, supra*, 365 U. S. at 187.

Similarly, although the District Court did not find "any *overall* Police Department policy to violate the legal and constitutional rights of citizens," the trial court did find that the evidence established that "such violations do occur, with such frequency that they cannot be dismissed as rare, isolated instances; and that *little or nothing is done by the city authorities to punish such infractions, or to prevent their recurrence.*" (A 124a, 126a, 357 F. Supp. at 1318, 1319) (emphasis added). Specifically, the trial court found that

> "[e]xisting procedures for handling civilian complaints and for enforcement of police discipline related to civilian complaints is totally inadequate. It is the *policy of the department* to discourage the filing of such complaints, to avoid or minimize the consequences of proven police misconduct, and to resist disclosure of the final disposition of such complaints." (A 124a, 357 F. Supp. at 1318) (emphasis added).

Although admittedly responsible for supervising and disciplining the Police Department and under the duty to act in accordance with the Fourteenth Amendment, defendants were found to have permitted a pattern of recurring and predictable police abuses of citizens' rights to

55. *See, e.g., Rozecki v. Gaughan*, 459 F. 2d 6, 8 (1st Cir. 1972); *Jenkins v. Averett*, 424 F. 2d 1228, 1232 (4th Cir. 1970); *Daniels v. Van DeVenter*, 382 F. 2d 29, 31 (10th Cir. 1967); *Basista v. Weir*, 340 F. 2d 74, 81 (3d Cir. 1965).

develop and to have acquiesced in the continuation of such conduct by failing to take effective action to punish or prevent such infractions. The lower courts, including ten courts of appeals, have expressly or impliedly recognized that acquiescence in unconstitutional activity is itself actionable under 42 U. S. C. § 1983.[56] As stated in *Schnell v. City of Chicago*, 407 F. 2d 1084, 1086 (7th Cir. 1969):

56. First Circuit: *Inmates of the Suffolk County Jail v. Eisenstadt*, 494 F. 2d 1196, 1199 (1st Cir.), *cert. denied*, 419 U. S. 977 (1974) (citing *Schnell v. City of Chicago* and holding Commissioner of Corrections may be enjoined for failure to bring conditions at the jail up to constitutional standards without proof of his personal fault); *Rozecki v. Gaughan*, 459 F. 2d 6, 8 (1st Cir. 1972) (citing *Monroe v. Pape* and holding superintendent of state treatment center may be ordered to eliminate unconstitutional conditions which are the natural consequence of his inaction); Second Circuit: *Hart v. Community School Board of Education*, 512 F. 2d 37, 50-51 (2d Cir. 1975) (citing *Monroe v. Pape* and holding governmental authorities responsible for the natural and foreseeable consequences of their actions and omissions); *Wright v. McMann*, 460 F. 2d 126, 134-35 (2d Cir. 1971), *cert. denied*, 409 U. S. 885 (1972) (warden liable for unconstitutional treatment of prisoners by lower prison officials where warden knew or should have known of conditions and was ultimately responsible for permitting such conditions to exist); *Belknap v. Leary*, 427 F. 2d 496, 498 (2d Cir. 1970) (injunctive relief appropriate where city officials continue to fail to protect demonstrators); Third Circuit: *Lewis v. Kugler*, 446 F. 2d 1343, 1351 (3d Cir. 1971) (officials who direct or tolerate constitutional violations by state troopers may be ordered to correct situations by altering police disciplinary procedure); Fourth Circuit: *Catlette v. United States*, 132 F. 2d 902, 907 (4th Cir. 1943) (deputy sheriff who failed to protect Jehovah Witness from mob violence was liable for deprivation of individuals' constitutional rights); Fifth Circuit: *Jennings v. Patterson*, 460 F. 2d 1021, 1022 (5th Cir. 1972) (official inaction is actionable when defendants are on notice as to wrongful acts, citing *Monroe v. Pape*); *Whirl v. Kern*, 407 F. 2d 781, 789-93 (5th Cir.), *cert. denied*, 396 U. S. 901 (1969) (failure to discharge official duty due to negligence held actionable); *Lynch v. United States*, 189 F. 2d 476, 480 (5th Cir.), *cert. denied*, 342 U. S. 831 (1951) ("failure by inaction to discharge official duty may constitute a denial of equal protection of the laws"); Sixth Circuit: *Smith v. Ross*, 482 F. 2d 33, 36 (6th Cir. 1973) ("law enforcement officer can be liable under § 1983 when by his inaction he fails to perform a statutorily imposed duty to enforce the laws equally and fairly"); *Azar v. Conley*, 456 F. 2d 1382, 1387 (6th Cir. 1972) (Section 1983 applicable

"From a legal standpoint, it makes no difference whether the plaintiffs' constitutional rights are vio-

56. (Cont'd.)
in cases of acts of omission as well as commission by police and public officials); *Peek v. Mitchell*, 419 F. 2d 575, 579 (6th Cir. 1970) (citing with approval *Schnell v. City of Chicago* while affirming the dismissal of a conclusory complaint as insufficiently detailed); Seventh Circuit: *Byrd v. Brishke*, 466 F. 2d 6, 10-11 (7th Cir. 1972) [citing *Monroe v. Pape* and holding actionable both misfeasance and nonfeasance: "We believe it is clear that one who is given the badge of authority of a police officer may not ignore the duty imposed by his office and fail to stop other officers who summarily punish a third person in his presence or otherwise within his knowledge. *That responsibility obviously obtains when the nonfeasor is a supervisory officer to whose direction misfeasor officers are committed.*" (emphasis added)]; *Schnell v. City of Chicago*, 407 F. 2d 1084 (7th Cir. 1969); Eighth Circuit: *Floyd v. Trice*, 490 F. 2d 1154, 1157 (8th Cir. 1974) (superintendent of schools is a proper party when it is alleged the schools he heads are guilty of discriminatory policies); *Jennings v. Davis*, 476 F. 2d 1271, 1275 (8th Cir. 1973) ("Where . . . one has an affirmative duty to act and he fails to act accordingly, he may be held liable for his nonfeasance if his omission is unreasonable under the circumstances."); Tenth Circuit: *Dewell v. Lawson*, 489 F. 2d 877, 881 (10th Cir. 1974) (police chief can be held liable under Section 1983 for failure to perform duty of establishing certain procedures which resulted in deprivation of plaintiff's civil rights); *Downie v. Powers*, 193 F. 2d 760, 763-65 (10th Cir. 1951) (failure of chief of police or other city officials to preserve order and to make Jehovah's Witnesses secure in their rights to peaceably assemble can be actionable); D. C. Circuit: *Carter v. Carlson*, 447 F. 2d 358, 365 (D. C. Cir. 1971), *rev'd on other grounds sub nom. District of Columbia v. Carter*, 409 U. S. 418 (1973) (supervisory officers may be held liable under Section 1983 for negligence in supervising their subordinates where such failure results in deprivation of plaintiff's rights by subordinates); *see also Boyd v. Gullett*, 64 F. R. D. 169, 173 (D. Md. 1974); *Green v. Cauthen*, 379 F. Supp. 361, 369-70 (D. S. C. 1974); *Moon v. Winfield*, 368 F. Supp. 843, 845 (N. D. Ill. 1973); *Downs v. Department of Public Welfare*, 368 F. Supp. 454, 464 (E. D. Pa. 1973); *Handschu v. Special Services Division*, 349 F. Supp. 766, 771 (S.D.N.Y. 1972); *Wilgus v. Peterson*, 335 F. Supp. 1385, 1390 (D. Del. 1972); *Hernandez v. Noel*, 323 F. Supp. 779, 783-84 (D. Conn. 1970); *Huey v. Barloga*, 277 F. Supp. 864 (N. D. Ill. 1967); *Cunningham v. Grenada Municipal Separate School District*, 11 Race Rel. L. Rep. 1776, 1782 (N. D. Miss. 1966); *Hicks v. Knight*, 10 Race Rel. L. Rep. 1504 (E. D. La. 1965); Shapa, *Constitutional Tort: Monroe v. Pape and the Frontiers Beyond*, 60 Nw. U. L. Rev. 277, 279-82 (1966).

> lated as a result of police behavior which is the product of the active encouragement and direction of their superiors or as a result of the superiors' mere acquiescence in such behavior. In either situation, if the police officials had a duty, as they admittedly had here, to prevent the officers under their direction from committing the acts which are alleged to have occurred . . . , they are proper defendants in this action." [57]

This principle is firmly grounded in the social and legislative history of 42 U. S. C. § 1983 and the exposition of that history in *Monroe v. Pape*, 365 U. S. 167 (1961).[58]

57. Although defendants' involvement in unconstitutional police conduct would be sufficient to support an award of damages, it should be noted that where, as in the present cases, equitable relief is sought as opposed to monetary damages, the degree of personal participation necessary to support the grant of relief is not as great. *Inmates of the Suffolk County Jail v. Eisenstadt*, 494 F. 2d 1196, 1199 (1st Cir.), *cert. denied*, 419 U. S. 977 (1974); *Adams v. Pate*, 445 F. 2d 105, 107 n. 2 (7th Cir. 1971); *Schnell v. City of Chicago*, 407 F. 2d 1084, 1086 (7th Cir. 1969); *Downs v. Department of Public Welfare*, 368 F. Supp. 454, 464 (E. D. Pa. 1973); *Jennings v. Davis*, 339 F. Supp. 919, 921 (W. D. Mo. 1972), *aff'd*, 476 F. 2d 1271 (8th Cir. 1973); *Wilgus v. Peterson*, 335 F. Supp. 1385, 1390 (D. Del. 1972); *Hernandez v. Noel*, 323 F. Supp. 779, 783 (D. Conn. 1970). Defenses of official immunity and good faith, which have often been held to protect certain public officials from liability for damages under Section 1983, have generally not been extended to claims or actions seeking injunctive relief. *Wood v. Strickland*, 95 S. Ct. 992, 997 n. 6 (1975); *Boyd v. Adams*, Civil No. 74-1337 (7th Cir., March 27, 1975); *Rowley v. McMillan*, 502 F. 2d 1326, 1331-32 (4th Cir. 1974); *Conover v. Montemuro*, 477 F. 2d 1073, 1082-83 n. 5 (3d Cir. 1973) (en banc) and cases cited therein; *Rozecki v. Gaughan*, 459 F. 2d 6, 8 (1st Cir. 1972).

58. We note also that the Philadelphia Home Rule Charter itself provides an additional statutory mandate of police supervision and discipline. Chapter 2, Section 5-200 provides, *inter alia*, that "[t]he Police Department shall have the power and its duty shall be to perform the following functions:

> (a) *Law Enforcement.* It *shall* preserve the public peace, prevent and detect crime, police the streets and highways and enforce traffic statutes, ordinances and regulations relating

> "It is abundantly clear that one reason the legislation [Section 1983] was passed was to afford a federal

58. (Cont'd.)

> thereto. The Department shall at all times aid in the administration and enforcement within the City of the statutes of the Commonwealth of Pennsylvania and the ordinances of the City.
>
> (b) *Maintenance of the Philadelphia Police.* The Department shall train, equip, maintain, *supervise and discipline* the Philadelphia Police" (emphasis added).

The Annotation to the Charter states that "[t]he training, equipment, maintenance, supervision and discipline of the Philadelphia Police is expressly provided for because each of these is a necessary prerequisite of an adequate and competent police force." Annotation No. 3, Section 5-200, Philadelphia Home Rule Charter.

The case of *Fernelius v. Pierce*, 22 Cal. 2d 226, 138 P. 2d 12 (1943) involved a similar statutory duty, although it was not a Civil Rights Act case. The statutory duty there was imposed by the City Charter of Oakland, California. The California Supreme Court analyzed in detail the implications of the disciplinary power, as well as the defendants' contention, not made here, that the existence of civil service appeal procedures absolved them of final responsibility for disciplinary decisions:

> "But if it were known, as averred here, that there were persons who actually possessed and indulged such propensities, the deliberate toleration of such persons on a police force by those having such knowledge and the power and duty to remove them appears to be without legal justification. It is a specious argument which would immunize any officer and employee for neglect to perform his own clear duty merely because potentially his proper act could be rendered nugatory by the improper act of a board or officer having a higher authority. Particularly is this true where, as here, the power and duty to initiate the basic and effective action are vested exclusively in the officers sought to be charged. In the Charter of the City of Oakland no provision has been called to our attention under which the unfit officers could have been removed except by action of these defendants, and it has not been suggested that any officers other than defendants owed any duty or had the power to remove them.
>
> The law giving to a superior officer the power to suspend or remove subordinates would be little more than a contribution to the ego of the superior if it did not likewise place on him the correlative duty of vigilantly exercising that power in the protection of the public interest. Against bestiality and brutality by police officers of the type depicted in this case the public has no adequate protection unless the superiors

right in the federal courts because, by reason of prejudice, passion, *neglect,* intolerance *or otherwise,* state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by the state agencies."

• • •

"Section [1983] should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions." *Monroe v. Pape, supra,* 365 U. S. at 180, 187 (emphasis added).

Cf. Burton v. Wilmington Parking Authority, 365 U. S. 715, 725 (1961).[59]

Defendants improperly attempt to characterize plaintiffs' case and the District Court's findings as being based on a "theory of administrative inefficiency or inadequacy" rather than constitutional violation (Pet. Br. 18). In so doing, defendants refuse to acknowledge the basic duty imposed upon them as public officials, the duty to protect the citizens of Philadelphia from violation of their constitutional and legal rights, and they ignore the District Court's specific findings with respect to their failure to fulfill their duty to the public by punishing or preventing recurrent police abuses. Failure of defendants to supervise and control the police in a manner that effectively

58. (Cont'd.)
are answerable for any lack of vigilance in the discharge of their duty." 22 Cal. 2d at 240-41, 138 P. 2d at 21 (emphasis omitted).

59. In another context, this Court just last Term held that a corporate officer may be found criminally liable when there is evidence that he had, "by reason of his position in the corporation, responsibility and authority either to prevent in the first instance, or promptly to correct, the violation complained of, and that he failed to do so." *United States v. Park,* 43 U. S. L. W. 4687, 4692 (U. S. June 9, 1975).

detects and disciplines officers who abuse citizens' rights is itself a constitutional violation particularly where defendants' conduct permits frequent and recurring police abuses to prey on citizens.

That defendants abdicated their responsibility is evident from the inadequacies in the procedures and practices developed and supervised by them for handling citizen complaints and their failure to provide any other effective method of detecting and preventing police violations of rights. Aside from the fact that it is defendants' policy to discourage the filing of such complaints, the existing departmental disciplinary procedures admittedly are not framed to cover violations of legal and constitutional rights of citizens (A 124a, 128a, 357 F. Supp. at 1318, 1320; Pet. Br. 39). Contrary to defendants' argument, their failure to detect and prevent police abuses is not a matter of the wisdom of executive discretion or administration (Pet. Br. 20-22) but rather represents a failure of defendants to abide by their constitutional obligation to protect the rights of citizens. As this Court has held,

"no State may effectively abdicate its responsibilities by either ignoring them or by merely failing to discharge them whatever the motive may be." *Burton v. Wilmington Parking Authority,* 365 U. S. 715, 725 (1961).

Defendants do not challenge the findings of the District Court with respect to patterns of abuses found, the existing complaint procedure, or the failure of city authorities to detect or prevent police abuses (A 69a-71a, 124a, 126a, 357 F. Supp. at 1292-93, 1318, 1319). Nor do they contend that there has been any reduction in the level of police violation of rights or any change in internal police

disciplinary procedures under their administration.[60] Moreover, defendants do not assert that the problem of police violation of citizens' constitutional rights is being handled by them in any other manner.[61] Rather, defendants in effect ask this Court to reverse the relief the lower courts found to be necessary and appropriate "to prevent future abuses" (A 130a, 357 F. Supp. at 1321) on the ground that whether or not city officials choose to protect citizens from police crimes is a matter of local executive

60. Although a new Mayor took office while these cases were pending before the District Court, two of the original defendants continued as defendants following the ordered substitution of parties. For example, defendant Rizzo, the present Mayor, had previously been Police Commissioner. Unlike *Spomer v. Littleton*, 414 U. S. 514 (1974), plaintiffs have sought injunctive relief against certain present defendants and have alleged and established that it is the *policy* of the offices held by defendants to fail to detect and prevent police violation of rights. These are cases in which effective relief calls for corrective behavior by those having official status and power rather than those who have lost that status and power through ceasing to hold office.

The relief sought in these cases is similar to *Lankford v. Gelston*, 364 F. 2d 197, 205 n. 9 (4th Cir. 1966) in which the Court of Appeals noted that although the Police Commissioner who had been in office at the time of the widespread illegal searches at issue had retired, the injunction could issue against his successor in office who would be substituted as a defendant.

> "Our concern is not with the person who happens to hold the office at a particular time, but with the office. The named defendant is only a nominal party, and the real aim of the proceeding is not to reach the Commissioner individually but to forbid an evil practice that has long and notoriously persisted in the Police Department."

Cf. Webster v. Fall, 266 U. S. 507 (1925) (holding that superior official is an indispensable party where injunction seeks to compel action only the superior had authority to take).

61. When offered the opportunity at a post-hearing conference in the District Court in January, 1973, defendants did not produce evidence of "any pertinent changes in procedures, or other relevant circumstances" which may have occurred since the briefs were filed in November, 1970 (*Goode*) and March, 1971 (*COPPAR*) nor did defendants otherwise request the reopening of the hearings (A 120a n. 1, 357 F. Supp. at 1317 n. 1).

discretion with which the federal courts cannot interfere. According to defendants, the only remedy lies with the electorate and as the present Mayor has been duly elected by the Philadelphia voters, his mandate carries with it the authority to exercise discretion to ignore the Constitution of the United States (Pet. Br. 20-21 & n. 15).

The authority and discretion vested in state and local officials has never extended to the sanctioning of the violation of citizens' rights, the very state of affairs found by the District Court to exist in the present cases. *See, e.g., Scheuer v. Rhodes*, 416 U. S. 232, 248-50 (1974). Defendants' argument is at fundamental variance with the basic tenets of our political and judicial systems which are founded on the propositions that we have "a government of laws and not of men"[62] and the Constitution is the "supreme Law of the Land."[63]

> "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." *Board of Education v. Barnette*, 319 U. S. 624, 638 (1943).

62. Massachusetts Declaration of Rights; *see* discussion in *United States v. United Mine Workers*, 330 U. S. 258, 307-9 (1947) (Frankfurter, J., concurring).

63. U. S. Constitution, Article VI; *Marbury v. Madison*, 5 U. S. (1 Cranch) 137, 177 (1803); *Cooper v. Aaron*, 358 U. S. 1 (1958) and concurring opinion of Justice Frankfurter.

See also Lucas v. Colorado General Assembly, 377 U. S. 713, 736-37 (1964); *Monroe v. Pape, supra*, 365 U. S. at 182-83.

Defendants distort the nature of the present cases by characterizing them as suits challenging the wisdom of executive administration and seeking revision of internal departmental procedures (Pet. Br. *e.g.*, 27). Although the inadequacies of existing complaint procedures became an issue in the cases as evidence of both official indifference to police abuses and the unavailability of remedies to effectively detect and prevent such abuses, the principal focus of the cases was the recurrent violation of rights and official acquiescence in those violations. Plaintiffs did not seek relief in the federal courts because they abstractly questioned the administrative wisdom of existing complaint procedures. Rather, plaintiffs filed these actions because they had been physically assaulted and unlawfully detained by Philadelphia police officers, and they wanted to prevent such abuses in the future.

Unlike the cases [64] relied on by defendants to support their argument that plaintiffs lack standing to sue, plaintiffs in the present actions have been the victims of the most direct type of "concrete injury" [65]—physical assaults and detentions. Thus, for example, Gerald Goode, a named plaintiff, established that he had been subjected to an illegal arrest and beating by police officers which the District Court found to constitute a "flagrant violation of the law and the Constitution." (A 75a-78a, 357 F. Supp. at 1295-97). Herbert Brown, another named plaintiff, alleged in the complaint and established that he had been

64. *O'Shea v. Littleton*, 414 U. S. 488 (1974); *Laird v. Tatum*, 408 U. S. 1 (1972); Ex parte *Levitt*, 302 U. S. 633 (1937); *see* Pet. Br. 19, 27.

65. *Schlesinger v. Reservists to Stop the War*, 418 U. S. 208, 220-21 (1974).

subjected to an illegal beating by the police (A 18a, 80a, 357 F. Supp. at 1297-98). Similarly other plaintiffs established that they had also been unlawfully arrested and/or assaulted by police officers.[66] Moreover, the District Court determined that plaintiffs could represent the class of all residents of the City of Philadelphia and an included class of all black residents of Philadelphia (A 24a).[67]

Contrary to defendants' argument, plaintiffs have suffered and are threatened with direct and concrete injury as a result of defendants' acquiescence in police lawlessness. An individual is no less directly injured by an official who knows or should have known of his subordinate's repeated illegal acts and fails to take any action to prevent them than he is by the official who orders his subordinate to commit the acts. The rights and liberties secured by the Constitution must be vigilantly protected by the courts both against those who strike the blows and those who, although responsible for preventing such acts, fail to do so. Having established a pattern of recurring and predictable violation of their constitutional rights and the failure of defendants, the responsible city officials, to prevent such abuses, plaintiffs were entitled to equitable relief.

66. *See, e.g.*, Raymond Ragland, A 89a-90a, 357 F. Supp. at 1302; Oliver & Linda Locke, A 107a-9a, 357 F. Supp. at 1310-11; Mark Soto, A 111a-13a, 357 F. Supp. at 1312-13; Boccuto and Dignetti, A 114a-16a, 357 F. Supp. at 1314; *see also* n. 3, *supra*.

67. In *Allee v. Medrano*, 416 U. S. 802, 816 n. 10 (1974), this Court held that "as to this portion of the decree, directed at police misconduct generally rather than to any particular state statute, named plaintiffs intimidated by misconduct may represent all others in the class of those similarly abused. . . ." As long as defendants fail to discharge their obligation to detect and effectively deal with recurring police misconduct, all residents of Philadelphia, and particularly all black residents, are threatened with illegal arrests and physical abuse by the police.

II. The Relief Granted Was Consistent With the Problem to Be Remedied, the Absence of Effective Alternatives, and the Need to Protect the Public Interest Involved.

Having concluded that equitable relief was necessary and appropriate to prevent future abuses, the trial court had wide discretion to tailor the injunctive decree to the particular factual situation so as to secure, as expeditiously and effectively as possible, the vindication of constitutional rights.[68] As Chief Justice Burger, speaking for a unanimous Court, pointed out:

> "Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." *Swann v. Charlotte-Mecklenburg Board of Education,* 402 U. S. 1, 15 (1971).

Accordingly, the framing of such decrees should take place in the trial rather than appellate courts, as the trial court alone is most familiar with the circumstances present

68. *See, e.g., Lemon v. Kurtzman,* 411 U. S. 192, 200-1 (1973); *Reynolds v. Sims,* 377 U. S. 533 (1964); *Griffin v. County School Board of Prince Edward County,* 377 U. S. 218, 232-34 (1964); *Baker v. Carr,* 369 U. S. 186 (1962); *Brown v. Board of Education,* 349 U. S. 294, 300 (1955).

In the antitrust area, it is firmly established that district courts have the power to grant relief appropriate to the factual situation. In construing Section 4 of the Sherman Act, 15 U. S. C. § 4 (1970), which gives the federal courts power to enjoin antitrust violations, this Court has held that the "essential consideration [governing remedial injunctive relief] is that the remedy shall be as effective and fair as possible in preventing continued or future violations . . . in the light of the facts of the particular case." *United States v. National Lead Co.,* 332 U. S. 319, 335 (1947). Remedial power is broader still in civil rights cases, where the federal courts are under statutory mandate to fashion efficient remedies for violations of vital constitutional rights. 42 U. S. C. § 1988 (1970); *see Basista v. Weir,* 340 F. 2d 74 (3d Cir. 1965).

and options available in the particular case. *International Salt Co. v. United States,* 332 U. S. 392, 400-11 (1947); *see also Swann v. Charlotte-Mecklenburg Board of Education, supra,* 402 U. S. at 27 n. 10. Given the trial court's broad discretion, "appellate review is correspondingly narrow." *Lemon v. Kurtzman,* 411 U. S. 192, 200 (1973).

The proper judicial standards for evaluating the relief granted are as follows: first, was the scope of the relief consistent with the scope of the problem it was intended to remedy; second, was the form of the relief consistent with the presence or absence of effective alternatives; and third, can it fairly be said that relief granted was consistent with the need to protect the public interest involved. *See Swann v. Charlotte-Mecklenburg Board of Education, supra,* 402 U. S. at 15-16.

A. The Scope of the Relief Was Clearly Consistent With the Scope of the Problem to Be Remedied.

The District Court found that a "pattern of frequent police violations of rights" existed,[69] that the defendants did little or nothing to prevent the recurrence of such violations and that existing procedures for handling civilian complaints and for enforcement of police discipline related to civilian complaints were "totally inadequate." (A 124a, 126a, 357 F. Supp. at 1318, 1319).

69. This pattern was found to be in part the result of the belief held by a "substantial number of policemen"

> "(a) that if an individual is freed without formal charges within 24 to 48 hours after his initial arrest, he should not object to the inconvenience involved; (b) that a person who questions the propriety of police conduct, or refuses to cooperate with the police, should expect to be inconvenienced, or worse; and (c) that if it is ultimately established that there was probable reason to believe an individual guilty of an offense, his treatment at the hands of the police should be judged by different standards than those applicable to the innocent." (A 122a-23a, 357 F. Supp. at 1317-18).

> "There are four principal defects in the present arrangement. (1) The departmental procedures are geared to handle infractions of police rules and regulations, yet these rules and regulations are not framed to cover specific violations of the legal and constitutional rights of civilians; (2) Complaints are handled on a 'chain of command' basis, and this results in a tendency to minimize and discourage civilian complaints; (3) The existing procedures do not provide adequate opportunity for the civilian complainant to present his case, before a relatively objective tribunal; and (4) The outcome of the proceeding is not disclosed." (A 128a, 357 F. Supp. at 1320).[70]

The District Court concluded that "the establishment of adequate procedures for handling and adjudicating civilian complaints against the police would go far to prevent further abuses, and to reduce the friction which the existing procedures, or lack of procedures, generate." (A 128a, 357 F. Supp. at 1320). In doing so, it specifically noted that it was *not* deciding that plaintiffs had a constitutional right to improved department procedures (A 130a, 357 F. Supp. at 1321). Rather, given defendants' failure to prevent recurring violations and given the demonstrated inadequacies of the existing complaint procedures, the District Court concluded that revision of the complaint procedures would be effective in achieving that to which plaintiffs were constitutionally entitled – the elimination of future abuses.

70. One of the means by which the department discourages the filing of citizen complaints is the department's practice of failing to record citizen complaints unless submitted in writing and the unavailability of forms for filing such complaints (A 69a, 357 F. Supp. at 1292). Moreover, when complaints are filed, the department minimizes the consequences of proven police misconduct (A 70a, 357 F. Supp. at 1293).

In conformity with its findings of fact, the trial court required defendants to submit for court approval a comprehensive program for dealing adequately with citizen complaints alleging police misconduct.[71] The court suggested that certain guidelines should be carefully

71. Requiring the defendants to submit an authorized plan in accordance with the District Court findings is by no means an unusual occurrence in the federal court system. "In school desegregation cases, courts have frequently required school boards to submit plans which can serve as a useful focus for analysis, criticism, and improvement. [citations omitted]." *Morgan v. Kerrigan*, 509 F. 2d 618, 620 (1st Cir. 1975); *see also Hawkins v. Town of Shaw, Mississippi*, 461 F. 2d 1171 (5th Cir. 1972), *aff'g en banc*, 437 F. 2d 1286 (5th Cir. 1971) (requiring defendants to submit a plan to cure discrimination against blacks in the provision of municipal services); *Castro v. Beecher*, 459 F. 2d 725, 729 (1st Cir. 1972) (court required submission of a plan to correct discriminatory police hiring practices); *Morales v. Turman*, 383 F. Supp. 53, 126 (E. D. Tex. 1974) (parties required to submit a plan for remedying violations of rights of juveniles involuntarily committed to the custody of the state); *Martinez v. Procunier*, 354 F. Supp. 1092 (N. D. Cal. 1973), *aff'd*, 416 U. S. 396 (1974) (requiring submission of new regulations relating to censorship of prisoners' mail and attorney-client interviews at prison conducted by law students or other paraprofessionals); *Jones v. Wittenberg*, 330 F. Supp. 707 (N. D. Ohio 1971), *aff'd sub. nom. Jones v. Metzgel*, 456 F. 2d 854 (6th Cir. 1972) (defendants required to submit proposals in accordance with detailed standards set by the court in order to eliminate unconstitutional conditions at county jail); *Wolin v. Port of New York Authority*, 268 F. Supp. 855 (S. D. N. Y. 1967), *aff'd*, 392 F. 2d 83 (2d Cir.), *cert. denied*, 393 U. S. 940 (1968) (ordering defendants to submit for court approval internal administrative directives to cure the enforcement abuses found by the court to exist concerning distribution of political leaflets in public terminal). Bankruptcy judges are required by statute to review and approve detailed plans submitted by debtors, creditors and others for disposition of property. *See, e.g.*, 11 U. S. C. §§ 574, 621 (1970). In antitrust cases, extensive and detailed relief has been predicated upon proposals requested from the parties. *See, e.g., United States v. Ford Motor Co.*, 315 F. Supp. 372 (E. D. Mich. 1970), *aff'd*, 405 U. S. 562 (1972) (proposed orders submitted concerning proper relief to be granted for violation of section 7 of the Clayton Act; divestiture and prohibition of certain other activities ordered).

considered in such formulation [72] (A 129a, 357 F. Supp. at 1321). Each of the guidelines suggested would appear beyond challenge, *as they track precisely the deficiencies in the present system which the court found to exist* – findings, we hasten to add, which were based on as full a record as we believe any court has heard on the issues in question.

In response to the District Court's Order, defendants submitted for approval a complaint and disciplinary procedure in the form of an internal police department directive (Directive 127).[73] The proposal represented a revision to the existing Directive 127. As a result of counterproposals by plaintiffs, numerous conferences, and

72. The guidelines set forth by the court were:

"(1) Appropriate revision of police manuals and rules of procedure spelling out in some detail, in simple language, the 'dos and don'ts' of permissible conduct in dealing with civilians (for example, manifestations of racial bias, derogatory remarks, offensive language, etc.; unnecessary damage to property and other unreasonable conduct in executing search warrants; limitations on pursuit of persons charged only with summary offenses; recording and processing civilian complaints, etc.); (2) Revision of procedures for processing complaints against police, including (a) ready availability of forms for use by civilians in lodging complaints against police officers; (b) a screening procedure for eliminating frivolous complaints; (c) prompt and adequate investigation of complaints; (d) adjudication of non-frivolous complaints by an impartial individual or body, insulated so far as practicable from chain of command pressures, with a fair opportunity afforded the complainant to present his complaint, and to the police officer to present his defense; and (3) prompt notification to the concerned parties, informing them of the outcome." (A 129a, 357 F. Supp. at 1321).

73. In supporting their argument of undue judicial intervention, defendants have pointed to the fact that the relief is framed in the form of a Police Department directive and is quite detailed. It should be kept in mind, however, that it was the *defendants themselves* who first proposed the form. Plaintiffs and the court merely proposed or ordered changes in the Department directive submitted by them to the court for its approval. In light of this background, they should not be heard to say that the form is defective or that it deals with the subject in too great detail.

its own review, the District Court added provisions which, in its view, were indispensable to the establishment of an adequate investigatory and review system for detecting and preventing police abuses. These ordered amendments, most importantly, were in areas as to which the trial record reflected marked deficiencies in the present system and to which defendants' proposed new Directive 127 was not addressed: that investigative procedures used for crimes committed by private citizens not be shortened or abbreviated in investigating police crimes; that improper chain of command influence be eliminated to the extent practicable; [74] that reasonable time limits be placed on the period of investigation; that the responsibility of individual investigative officers be pinpointed as closely as possible to assure adequate implementation and review; and that provisions for anonymous complaints, for standards of disposition of complaints, and for maintenance of records all be adequate. In addition, the court's amendments *added* a provision for easy screening and disposition of frivolous complaints, a feature which the court's opinion mentioned (A 129a, 357 F. Supp. at 1321), but which defendants' revised Directive did not include.

The final judgment (App. Cert. Pet. 20a-23a) directed defendants to implement a directive "substantially in the form of" the court approved directive. Again, the provisions of the final judgment, including the nature of the information which complainants should provide, and the need for adequate distribution and maintenance of records, merely reflected the findings of fact which the court had made earlier.

74. In this context we note the lower court's reference to similar problems in the military justice system, A 130a, 357 F. Supp. at 1321. We note further this reference was made in support of, rather than in derogation of, the important role the Police Commissioner must and should play in disciplinary matters.

Defendants' principal objection to the form of relief granted is that it "seriously effects [*sic*] the entire police function." (Pet. Br. 29). Defendants attempt to support this claim with a rather detailed account of the way in which the final judgment will interfere with police operations (Pet. Br. 29-35). Despite the specificity of their contentions, defendants fail to cite a single reference in either the voluminous record of this case or any other source which supports their prediction as to the impact of the final judgment on police operations.

The reason for this lack of authority is simple. Defendants never before raised these specific objections either during the lengthy hearings or numerous conferences with the court prior to the entry of final judgment. Although defendants were well aware of the intended scope and nature of the final judgment through the post-hearing conferences with the District Court, defendants never sought to present evidence concerning the purported unworkability of the relief. After the final judgment had issued, defendants never filed a motion to reconsider the form of relief setting forth the matters now raised in this Court nor did they complain about the "effect on the operations room" to the Court of Appeals. Moreover, the general, conclusory contention raised by defendants below that the relief would improperly "interfere" with police operations was rejected by the lower courts which were both concerned with minimizing intrusion into police activities (A 127a-30a, 357 F. Supp. at 1320-21; App. Cert. Pet. 11a-12a, 506 F. 2d 547-48.)

Despite the numerous opportunities for defendants to have raised and detailed their specific objections to the impact of the final judgment, they failed to do so. Rather, defendants raise these issues for the first time here in an effort to overturn the grant of *any* relief on the basis

of unsubstantiated conclusions which should be the subject of the trial court's review and evaluation and which, even if valid, would only call for modifications to specific aspects of the decree rather than the denial of all relief. Defendants' claims are not properly raised in this Court.

> "Our jurisprudence teaches that we should decide issues on the basis of facts of record." *Wainwright v. City of New Orleans*, 392 U. S. 598, 600 (1968) (concurring opinion).

This Court has dismissed writs of certiorari as improvidently granted where further review of the case has indicated that the record is inadequate or insufficient as a basis for deciding the issues raised by petitioners.[75] In this case as well, defendants should not be allowed to disrupt the orderly process of judicial review by asking this Court to rule on constitutional questions in the absence of *any* evidence in the record to support defendants' factual claims raised for the first time in this Court (claims which plaintiffs would seriously contest if presented in the proper forum).

Moreover, the validity of defendants' objections must be questioned in view of the fact that many of the chal-

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75. As stated by Justice Fortas concurring in such a dismissal of a writ of certiorari:

> "The Court's disposition of this case is based upon the sound premise that we should not use our certiorari jurisdiction to express our views on a point in a case which we cannot dispose of because of inadequacies of the record which cannot realistically be remedied." *Massachusetts v. Painten*, 389 U. S. 560, 562 (1968).

See also McClanahan v. Morauer & Hartzell, Inc., 404 U. S. 16 (1971); *Taggart v. Weinacker's, Inc.*, 397 U. S. 223 (1970); *Wainwright v. City of New Orleans*, 392 U. S. 598 (1968); *Gilbert v. California*, 388 U. S. 263, 269 (1967); *Smith v. Mississippi*, 373 U. S. 238 (1963); *Neddelman v. United States*, 362 U. S. 600 (1960); *Mitchell v. Oregon Frozen Foods Co.*, 361 U. S. 231 (1960).

lenged aspects of the relief were either initially proposed by defendants themselves or are similar to existing police procedures. For example, defendants complain the judgment requires that complaints be filed in the operations room of each police district and that the operations room supervisor is required to assist in the completion of the complaint forms. They contend that although the staff of the operations room could handle the new duties with respect to complaint forms "[u]nder normal circumstances," the staff would "probably" have to be augmented during periods of heavy police and criminal activity when it "can be expected" that there will be frequent complaints. The "probable result of the decree" according to defendants "will be to reduce the police presence on the street during the periods of greatest need in order to increase the operations room staff." (Pet. Br. 31-32).

Apart from the speculative and unsubstantiated nature of defendants' argument, the source of the potential problem appears to be the fact that complaint forms are to be completed and filed in the operations room with the assistance of the operations supervisor. *This feature of the final judgment was taken verbatim from defendants' proposed order submitted on April 12, 1973.* (*Compare* A 135a, II.A *with* App. Cert. Pet. 25a, II.A).[76] Is this Court therefore to conclude that defendants, given their knowledge and concern for the effectiveness of police operations, would propose a procedure for handling the receipt of complaints the inevitable result of which would be the "misallocation of police personnel," (Pet. Br. 32) or should the Court disregard defendants' belated objection and affirm the courts below, thus allowing the case to return to the District Court where defendants could

76. Even the existing procedures for handling citizen complaints set forth in the March 1967 Directive 127 provided for complaints to be brought to the attention of the operations room supervisor (A 143a, II.A).

make application for any modification they could prove was proper?[77]

Defendants also contend that the final judgment intrudes upon the many duties of the Police Commissioner requiring the Commissioner or a Deputy Commissioner to personally review all investigatory files of citizen complaints certified[78] to them by the Chief Inspector of the Internal Affairs Bureau. Defendants note, in a continuation of their discussion *dehors* the record, that in 1974 the Police Department received approximately 1,200 complaints of police misconduct and therefore the Commissioner or Deputy Commissioner would be required to review 23 files per week, an unreasonable burden according to defendants (Pet. Br. 33-34). They further object to the "creation of [a] superfluous tribunal" to which cases involving factual disputes regarding the incident are to be presented (Pet. Br. 34).

Defendants fail to point out that under *existing procedures,* the Police Commissioner is supposed to receive an investigation report concerning all recorded complaints (A 69a-71a, 357 F. Supp. at 1292-93) and therefore in 1974, he probably found time, consistent with his other duties, to review 23 reports per week. Defendants also fail to mention that the "superfluous tribunal" to which they object is the *existing Police Board of Inquiry* which on occasion presently decides cases of citizen complaints against the police at "trial-type hearings." When these occur they include presentation of the complaint by a "police advocate" and representation of the accused officer

77. Paragraph 7 of the final judgment provides that the District Court shall retain jurisdiction to modify the order and grant such further relief as may be appropriate, upon the application of any party in interest (App. Cert. Pet. 23a).

78. Complaints determined by the investigator and Chief Inspector to be frivolous are not to be forwarded to the Police Commissioner (App. Cert. Pet. 31a-32a).

by counsel (A 70a-71a, 357 F. Supp. at 1293). The similarities between defendants' existing procedures and the portions of the final judgment objected to by defendants suggest that their unsupported predictions concerning interference with police operations are not valid and should first be subject to evaluation by the trial court before this Court is asked to consider them as a basis for reversal of an order approved by two lower courts.[79]

In setting forth their claim that the final judgment interferes with police operations, defendants totally ignore the reason the District Court found it necessary to enter the decree in the first place, *i.e.*, defendants' failure to detect and prevent police violations of constitutional rights. "Judicial authority enters only when local authority defaults." *Swann v. Charlotte-Mecklenburg Board of Education, supra*, 402 U. S. at 16. Every judicial grant of relief is intended to "interfere" with existing conditions to some extent, for if existing conditions were satisfactory, no relief would have been necessary. The propriety of the relief must be evaluated in light of the nature of the violation found to exist. *Swann v. Charlotte-Mecklenburg Board of Education, supra.* Where constitutional rights have been found subject to frequent violations as a result of defendants' policies and practices, the District Court has broad equitable power to fashion relief to effectively protect such rights in the future. Moreover, protestations of "interference" have not prevented courts from granting

79. Defendants' other specific objections concerning procedures for investigating complaints relative to crimes, the requirement to obtain written, signed statements from all participants and witnesses, and the requirement that investigations be completed within 45 days from the date of receipt of the written complaint (Pet. Br. 31-33) are the type of specific objections which should be addressed to the trial court in support of a motion to modify the final judgment. Defendants never raised these points at the time they participated in the drafting of the decree, and the validity of these objections has never been tested.

detailed equitable relief in cases involving unlawful actions by the police.[80]

Unlike the cases of *O'Shea v. Littleton*, 414 U. S. 488 (1974) and *Gilligan v. Morgan*, 413 U. S. 1 (1973), relied on by defendants, the relief granted in the present cases neither disrupts state criminal proceedings nor constitutes a continuing judicial surveillance of the Philadelphia police. *O'Shea* involved a claim that defendants, a magistrate and a state court judge, engaged in illegal bond-setting, sentencing, and jury-fee practices in state criminal cases which deprived plaintiffs of their constitutional rights. Citing the policy of restraint by federal courts in the issuance of injunctions against state criminal prosecutions set forth in *Younger v. Harris*, 401 U. S. 37 (1971), this Court concluded that the relief sought would violate that policy by disrupting the normal course of such state proceedings. The injunction requested would permit members of plaintiffs' class who were being prosecuted in the state courts to interrupt such proceedings in order to adjudicate claims of noncompliance by defendants with the federal court order. Moreover, this Court noted that the fact of such ongoing state proceedings provided plain-

80. *E.g.*, *Erie Human Relations Commission v. Tullio*, 357 F. Supp. 422, 426 (W. D. Pa. 1973), *aff'd as modified*, 493 F. 2d 371 (3d Cir. 1974) (hiring of police); *Bridgeport Guardians, Inc. v. Members of Bridgeport Civil Service Commission*, 354 F. Supp. 778 (D. Conn.), *aff'd as modified*, 482 F. 2d 1333 (2d Cir. 1973) (hiring and promotion of police); *NAACP v. Allen*, 340 F. Supp. 703 (M. D. Ala. 1972), *aff'd*, 493 F. 2d 614 (5th Cir. 1974) (hiring of state police); *Allen v. City of Mobile*, 331 F. Supp. 1134 (S. D. Ala. 1971), *aff'd*, 466 F. 2d 122 (5th Cir. 1972), *cert. denied*, 412 U. S. 909 (1973), and *Baker v. City of St. Petersburg*, 400 F. 2d 294 (5th Cir. 1968) (both banning racial factors in decisions as to police personnel assignments, promotions or jurisdiction of command, and ordering specific administrative steps for the elimination of such factors). In these cases, the courts have generally retained jurisdiction and required reports in order to ensure compliance with the order and the effectiveness of the relief.

tiffs with a forum and legal remedies adequate to redress the alleged violations, such as the right to substitution of a judge, change of venue, and review on direct appeal or post conviction collateral review.

In the present cases, the relief ordered does not interfere with or involve ongoing state criminal proceedings. The complaint procedures are totally separate and independent from the state criminal process. Even if a complainant, who is also charged with a crime arising out of the incident, establishes that the police officer acted improperly, the only relief granted will be directed at disciplining the officer; the criminal proceeding against the complainant would not be affected.[81]

Similarly, the final judgment does not impose continuing judicial surveillance of all or any of the activities of the police department such as was requested with respect to the Ohio National Guard in *Gilligan v. Morgan, supra.* The relief sought in *Gilligan* provides a sharp contrast with the nature and basis of relief granted in the present cases. Plaintiffs in *Gilligan* requested continuing judicial surveillance of the training, weaponry and orders of the Ohio National Guard, including the setting of standards in these areas by the courts. Plaintiffs argued that such broad relief was necessary because of an isolated, albeit tragic, incident of alleged violations of students' rights by the Guard at Kent State University, although

81. To the extent the claim of police misconduct would also support a motion to suppress evidence (*e.g.*, illegal search) or for dismissal of the charges (*e.g.*, illegal arrest), these matters would have to be properly raised in the state criminal proceeding. Moreover, the final judgment specifically provides that a complainant or alleged victim of police misconduct who has been arraigned on criminal charges based upon events upon which the complaint is founded may elect not to give a statement to the investigator until final disposition, including appeal, of all such criminal charges. The investigation would then remain open until after such final disposition (App. Cert. Pet. 32a-33a).

there was no evidence of threatened recurrences of such events. This Court held that plaintiffs' claim did not present a justiciable controversy because the injunctive relief requested would embrace areas which were explicitly assigned by the Constitution to the control of the legislative and executive branches, specifically citing Article I, Section 8 which vests in Congress the power to organize, arm and discipline the militia.

In rejecting an argument that *Gilligan* bars suits seeking injunctions against police misconduct similar to that proposed by defendants herein, the Seventh Circuit noted that there is no provision in the Constitution analogous to Article I, Section 8 which would be applicable in a case involving an area within the control of a municipality rather than a co-equal branch of the federal government. Moreover, as demonstrated by this Court's decision in *Allee v. Medrano, supra,* 416 U. S. 802, injunctions against the police are appropriate when based on a persistent course of unconstitutional police conduct, a situation which was not present in *Gilligan. Calvin v. Conlisk,* Civil No. 74-1289 (7th Cir., June 30, 1975) (reversing dismissal of a complaint raising issues virtually identical to the present actions).

Unlike *Gilligan,* plaintiffs in the present cases presented convincing evidence of a pattern of recurrent and predictable police misconduct and official toleration of such abuses in the past. Based on the comprehensive and voluminous record produced, the District Court properly concluded that such abuses will continue to occur in the absence of the ordered equitable relief. Moreover, the relief ordered is to be administered solely by the Police Department, does not interfere with police discretion in their normal routines, and does not involve the federal courts in the supervision of the day-to-day operation of the

Police Department (A 127a-30a, 357 F. Supp. at 1320-21; App. Cert. Pet. 11a-12a, 506 F. 2d at 547-48). The District Court's role is limited to evaluating whether the program is effective and whether any modifications of the order are necessary to improve effectiveness or eliminate burdensome aspects of the relief upon application of any party (App. Cert. Pet. 23a).

B. The Form of the Relief Was Consistent With the Absence of Effective Alternatives.

The form of relief was the approval of, and order to implement, a system of internal investigation and review of complaints for the protection of Philadelphia's citizens. In granting this particular form of relief the trial court, as we indicate below, clearly did the following: first, it considered all feasible alternatives to remedy the problem at hand; second, given these alternatives, it selected the option which, based on the record, appeared to offer the greatest promise of effective relief; third, it made provision for evaluation in actual practice of the options selected; and, fourth, it allowed for possible modification, or the selection of other alternatives, should evaluation demonstrate that the remedy chosen is either too cumbersome on defendants or, on the other hand, ineffective as a remedy for plaintiffs. *Cf. Green v. County School Board of New Kent County,* 391 U. S. 430, 439 (1968) (school desegregation decree).

The trial court very clearly and painstakingly evaluated possible alternatives to the course actually adopted. The most drastic of these—imposition of external civilian control (by appointment of a master or other means as requested by plaintiffs in *COPPAR,* A 49a)—was rejected, not because the facts might not ultimately warrant it, but because in the court's view the defendants themselves

ought, in the first instance, to retain the responsibility for setting their own house in order.

> "[D]eference to the essential role of the police in our society does mandate that intrusion by the courts into this sensitive area should be limited, and should be directed toward insuring that the police themselves are encouraged to remedy the situation." (A 127a, 357 F. Supp. at 1320).

See also A 129a, 357 F. Supp. at 1321.

The trial court also declined to issue a broad injunctive prohibition against all police infringements of federally secured rights, a course which would have subjected police officials to contempt adjudications for each such violation and would have given the court a continual monitoring role insofar as contempt proceedings were involved.[82] The District Court was well aware of the problems both in framing and enforcing this type of injunction as a result of its experience with the temporary restraining order

82.

"For tolerated constitutional violations, a prohibitory injunction which only ordered high police officials to refrain from unconstitutional conduct would be useless—the problem lies not in what such officials are doing but in what they are *not* doing. Purely prohibitory injunctions would have to be directed against the subordinate policemen who were acting illegally. But courts would be unable to enforce such injunctions unless they were willing to take over the task of disciplining individual policemen. Such an approach would be highly inefficient since the court's only means of enforcing its orders directly against policemen—a contempt proceeding—would be far too cumbersome and heavy-handed to deal effectively with large numbers of alleged violations.

If the injunction is to have any utility as a remedy for tolerated police abuse, it must require affirmative action by the officials responsible for police conduct." (emphasis in original; footnote omitted). Comment, *The Federal Injunction as a Remedy for Unconstitutional Police Conduct,* 78 Yale L. J. 143, 147 (1968), quoted with approval in *Allee v. Medrano, supra,* 416 U. S. at 858-59 n. 20 (Burger, C. J., White and Rehnquist, J. J., dissenting).

entered at the outset of the *COPPAR* case (A 67a, 357 F. Supp. at 1291).[83] Although the trial court concluded that its order had been violated, it declined to hold defendants in contempt acknowledging that the violations may have been due "to a lack of precision in framing the injunctive order." (A 126a, 357 F. Supp. at 1319). Where there are many independent instances of violations of constitutional rights by the police, as in the present cases, it would be a difficult, if not impossible, task to draft an injunction with the desired specificity. Moreover, in one case in the District Court in which an explicit restraining order had been issued against the Philadelphia Police Department, numerous police officers and their superiors were found to have deliberately violated the order. *Farber v. Rizzo,* 363 F. Supp. 386 (E. D. Pa. 1973). Finally, the District Court took judicial notice of the consent injunctive decree entered in *Alexander v. Rizzo,* Civil No. 70-992 (E. D. Pa., Dec. 18, 1972) with respect to the abuses inherent in initial police contacts and arrests "for investigation" and concluded that this consent decree obviated the necessity for sweeping injunctive relief in the present cases[84] (A 67a-68a, 127a-28a, 357 F. Supp. at 1292, 1320).

The trial court deferred to the role which the Police Commissioner currently plays in disciplinary matters (A 130a, 357 F. Supp. at 1321). The opinion was replete with references to the difficult and sensitive nature of police work (A 121a-22a, 127a, 128a-29a, 357 F. Supp. at 1317, 1320), and the court was unwilling to impose some

83. *See* n. 6, *supra.*

84. With respect to the consent injunctive decree entered in *Alexander v. Rizzo,* the Court of Appeals noted,

> "We need not consider, nor did the district court, whether this consent decree has any collateral estoppel effect as to the existence of a pattern of misconduct by the police officers. Nevertheless, it was a factor to which the trial judge could give some weight in arriving at his findings." (App. Cert. Pet. 10a, 506 F. 2d at 547).

form of civilian review without giving the police themselves a reasonable opportunity to reduce the complained of abuses (A 129a, 357 F. Supp. at 1320).

In addition, the manner in which the trial court weighed these respective remedial options is a clear indication that the relief granted, in light of the voluminous record as to official indifference, appeared to the court to offer the greatest promise of effective relief. Finally, paragraphs 6 and 7 of the final judgment clearly anticipated evaluation and possible modification of the relief granted in the event of ineffectiveness and/or cumbersomeness.

Defendants contend that the District Court ignored available legal remedies which would adequately compensate individuals whose constitutional rights have been violated by public officials and which therefore obviate the need for equitable relief (Pet. Br. 37-44). The District Court, however, heard extensive expert testimony[85] concerning all existing remedies[86] and concluded they were "inadequate to protect the public interest involved." (A

85. Bernard L. Segal, an attorney whose eminent qualifications were admitted, stated: "There is positively no effective or meaningful remedy through presently established mechanisms for redress against abuses of police power directed toward an individual." *COPPAR* Record 904. Another expert witness, and member and chairman of the former Philadelphia Police Advisory Board, testified: "In my experience as a practicing attorney and as a person involved in this area, through my extra-legal activities, there isn't yet any legal remedy which effectively gives a citizen redress." *Goode* Record 655-56; *see also COPPAR* Record 913-15, 1051.

86. In addition to its review of existing police department citizen complaint procedures, the trial court made specific findings concerning relief available through the Commission on Human Relations (A 71a-72a, 357 F. Supp. at 1293-94); Police Advisory Board (A 72a, 357 F. Supp. at 1294) and criminal prosecution through the District Attorney's Office (A 73a, 357 F. Supp. at 1294). In 1969, both the Human Relations Commission and Police Advisory Board ceased to handle citizen complaints against the police. The Board, which had been established in 1958 by the Mayor to hear citizens' complaints against the police, was dissolved by Mayor Tate in 1969 (A 72a, 357 F. Supp. at 1294).

126a-27a, 357 F. Supp. at 1319). With respect to damage actions against public officials, the trial court found:

> "Private suits for damages are expensive, time-consuming, not readily available, and not notably successful; *moreover, they have no preventive effect.*" (A 127a, 357 F. Supp. at 1319) (emphasis added).[87]

Moreover, the inadequacy of actions for money damages as a remedy for persons who establish that they have been denied their constitutional rights has been recognized by the courts. *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U. S. 388, 421-22 (1971) (Burger, C. J., dissenting); *Lewis v. Kugler*, 446 F. 2d 1343, 1350 (3d Cir. 1971); *Lankford v. Gelston*, 364 F. 2d 197, 202 (4th Cir. 1966); *see also* Comment, *Injunctive Relief for Violations of Constitutional Rights by the Police*, 45 Colo. L. Rev. 91, 94-97 (1973). Indeed, this Court has characterized such a remedy as "worthless and futile." *Mapp v. Ohio*, 367 U. S. 643, 651-52 (1961).

Damage actions against public officials suffer from numerous defects. Among these are the reluctance of juries to find police officers liable, especially when the plaintiff has been accused of criminal conduct,[88] the reluctance of private attorneys to handle police abuse cases,[89] the limited resources of civil rights organizations and similar groups to provide unpaid legal assistance to victims,[90] delay and backlog in the courts,[91] the practice of conditioning dismissal of criminal charges upon an agreement by a citizen not to prosecute the police civilly,[92] and the inability of monetary damages to adequately compensate for constitutional violations. The right to be secure in one's person and not to be subjected to unlawful police assaults, searches and seizures are rights which manifestly are not capable of valuation in terms of dollars and cents and therefore any violation of such rights constitutes irreparable injury. This fact has led a number of courts to find actions for damages to be inadequate in cases of constitutional violations by police.[93]

87. Significantly, defendants omitted the italicized portion of this sentence when they quoted it in their Brief (Pet. Br. 40).

88. *See Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U. S. 388, 421-22 (1971) (Burger, C. J., dissenting).

89. *See* Testimony of Mercer D. Tate, *Goode* Record 658-59; Brief of the Commonwealth of Pennsylvania as *Amicus Curiae* at 16-17 (the Lawyer Reference Service in Philadelphia has been unable to obtain attorneys to handle police abuse cases and the Philadelphia Bar Association's special panel of volunteer attorneys to represent such clients consists of fewer than twenty-five attorneys).

The most critical deficiency of actions for damages is their lack of preventive effect. Damage actions do not protect plaintiffs or their class from the infliction of summary punishment or illegal arrest and detention. *See, e.g., NAACP v. Thompson*, 357 F. 2d 831, 838 (5th Cir), *cert. denied*, 385 U. S. 820 (1966). At most, such actions attempt to provide after the fact "compensation." Moreover, the burden of attempting to deter such abuses should not be placed on the victim. It is no comfort to a citizen to know that although the police may unlawfully

90. *See* Brief for the American Civil Liberties Union et al. as *Amici Curiae* at 39-40 n. 61.

91. Testimony of Mercer D. Tate, *Goode* Record 658.

92. Testimony of Bernard L. Segal, *COPPAR* Record 914; *cf.* Testimony of Professor Louis B. Schwartz, Goode Record 302; Mary Blackwell, A 96a, 357 F. Supp. at 1305.

93. *Lewis v. Kugler*, 446 F. 2d 1343, 1350 (3d Cir. 1971) ["[I]t can no longer be seriously contended that an action for money damages will serve adequately to remedy unconstitutional searches and seizures." (footnote omitted)]; *Lankford v. Gelston*, 364 F. 2d 197, 202 (4th Cir. 1966); *cf. Danielson v. Local 275, Laborers Int. U. of N. Amer.*, 479 F. 2d 1033, 1037 (2d Cir. 1973) ("Irreparable injury is suffered where monetary damages are difficult to ascertain or are inadequate").

detain and physically abuse him today, he can hire a lawyer, pursue his case in the courts for several years and possibly recover monetary damages in the future for the denial of rights he suffered. Even if he has the initiative and resources to seek such relief, he cannot be assured that his efforts will prevent him from being subject to a similar attack on his rights in the future.

In contending that such remedies are adequate and preclude injunctive relief by the federal courts, defendants have demonstrated the type of callous disregard for individual rights and indifference to their own obligations to prevent violations of these rights about which these actions complain. For isolated instances of violation of constitutional rights where there is no threat of recurrence, damage actions may provide the only possible relief. However, where, as here, the court has found a pattern of recurrent violations of rights by police and systematic indifference thereto by supervisory personnel, the concern must be with preventing such violations in the future by eliminating the causes, a result the remedies at law proposed by defendants are unable to accomplish.

C. The Relief Granted Was Consistent With the Public Interest.

The public interest requires that the police both enforce and observe the law with equal vigor. The relief ordered by the District Court protects both of these interests. By requiring the establishment of procedures for adequately reporting, investigating and disposing of citizen complaints against the police, the final judgment provides an effective method for holding police accountable for violations of citizens' rights. By requiring that these procedures be implemented by the police themselves, the final judgment minimizes any intrusion into law enforcement operations.

Defendants suggest that the relief ordered will result in police officers being reluctant to properly enforce the law for fear of being hauled before the Police Board of Inquiry for mistakes of judgment or "petty annoyances" to citizens (Pet. Br. 34-35). This argument overlooks the fact that the Police Board of Inquiry is composed solely of police officers. Moreover, it is only an advisory board; the ultimate responsibility for decisions in cases brought before the board remains with the police commissioner. The relief ordered involves no change either in the standards which should be applied in determining whether police conduct is proper or in the people who are to decide if those standards have been violated. Police are judging police. An officer who is performing his job properly need not be concerned that someone unfamiliar with the nature of his job will evaluate his conduct. To the extent that concern about possible disciplinary proceedings deters an officer from performing his job improperly, the relief ordered is simply accomplishing the result which it was designed to achieve.

Neither the police nor the public has an interest in the perpetuation of the pattern of police misconduct found by the District Court to exist in Philadelphia. Faced with the obligation to provide effective relief, the District Court fashioned a limited and moderate remedy directed at reducing police abuse of citizens' rights. The District Court properly and effectively exercised its discretion in framing appropriate injunctive relief.

CONCLUSION.

The judgment of the Court of Appeals for the Third Circuit with respect to the grant of injunctive relief should be affirmed, and the case remanded to the District Court for proceedings consistent with the opinion of the Court of Appeals.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1974

No. 74-942

FRANK L. RIZZO, *et al.*, *Petitioners*

v.

GERALD G. GOODE, *et al.*, *Respondents*

HONORABLE JAMES H. J. TATE,
FRANK L. RIZZO, *et al.*, *Petitioners*

v.

COUNCIL OF ORGANIZATIONS ON PHILADELPHIA
POLICE ACCOUNTABILITY AND RESPONSIBILITY, *et al.*,
Respondents

REPLY BRIEF FOR PETITIONERS

On Writ of Certiorari to the
United States Court of Appeals for
the Third Circuit.

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ARGUMENT

Respondents have argued to this Court that the relief granted by the District Court in their favor and against petitioners was a necessary remedy demanded by the evidence and the findings of the Court; that the scope of the relief granted was consistent with the problems found to exist, and that the relief would work no hardship on petitioners. It is in reply to these arguments that your petitioners, defendants below, respectfully submit this brief.

I. In Granting Relief Despite Its Conclusion that Petitioners Did Not Violate any Constitutional Rights of Respondents, the District Court Erred as a Matter of Law.

After exonerating petitioners from charges of unconstitutional conduct and after concluding that the "wrong" which petitioners had committed violated any constitutional rights of respondents, the District Court improperly created a remedy where there was no corresponding constitutional right. The District Court expressly found that petitioners, though accused of implementing departmental policies of racial bias and unconstitutional conduct towards citizens, had not implemented any such policies. [A. 124a, 126a] 357 F. Supp. at 1318, 1319. Further, the District Court refused to find a policy on the part of the petitioners to condone or knowingly tolerate unconstitutional conduct on the part of police officers. The court did find however, that a small minority of police officers, who were never made defendants in either of the cases presently before this Court, had violated the constitutional rights of certain citizens. [A. 123a] 357 F. Supp. at 1318. Had those police officers been defendants, presumably the District Court would have found them liable for their conduct. Finally, the Court found that the Police Department's procedures for the reception of citizen complaints of police misconduct

and for disciplining police officers were "inadequate". [A. 124a] 357 F. Supp. at 1318, 1319. This "inadequacy" of police procedures is the only "wrong" for which the Court found petitioners liable.[1]

Respondents argue that a result of these "inadequate" procedures, petitioners are unable to insure the public that in the future some police officer will not violate the constitutional rights of some citizen.[2] Their position is that since petitioners are unable to insure the public from future, unspecified acts of police misconduct, the continued maintenance of these "inadequate" procedures is, in itself, a violation of the constitutional rights of the citizens.

Both of the courts below posed the question of whether the citizens have the constitutional right which respondents urge exists; *i.e.*, do respondents have a constitutional right to improved administrative procedures for

1. Respondents suggest that the issue of the adequacy of the Department's disciplinary procedures come to the fore only after the presentation of evidence of wrongdoing on the part of individual police officers. [Brief for Respondents, p. 50]. Such an interpretation does not square with the complaints in either the *Goode* or *COPPAR* cases. From the outset of the litigation, a judicial assumption of police department operations, either by mandatory injunction [A. 14a, 21a-22a] or receivership [A. 49a-50a], was the principal issue in each case.

2. At common law, the failure or inability of a municipal police department to provide *adequate* police protection for its citizens has never given rise to a cause of action against a municipality or its law enforcement officials. See generally, *Matyka v. City of Amsterdam*, 15 N.Y. 2d 134, 204 N.E. 2d 635 (1965); *Bass v. City of New York*, 38 App. Div. 2d 407, 330 N.Y.S. 2d 569 (1972); *Huey v. Cicero*, 41 Ill. 2d 531, 243 N.E. 2d 214 (1969); *Henderson v. City of St. Petersburg*, 247 So. 2d 23 (Florida App. 1971); *Simpson's Food Fair v. City of Evansville*, 272 N.E. 2d 871 (App. Ct. Ind. 1971); *Jahnke v. Incorporated City of Des Moines*, 191 N.W. 2d 780 (Supreme Court of Iowa 1971); *Westminster Investing Corp. v. Murphy Co.*, 434 F.2d 521 (D.C. Cir. 1970); *Amato v. City of New York*, 268 F.Supp. 705 (S.D. N.Y. 1967); 18 McQuillan, *Municipal Corporations* [3rd Edition revised] §§53.79 and 53.80.

the reception of citizen complaints of police misconduct and the disciplining of police officers? More basically, the real question is: Does a constitutional right lie in citizens, enforceable in the federal courts, to require improvement, adequacy or efficiency in the performance in office of the citizens' elected governmental officials and their appointees? Both of the courts below answered that question in the negative; both courts emphasized that the respondents had no constitutional right to any improvement in the performance of the petitioner officials.

However, both of the courts below, as well as respondents, argue that in so answering, the courts were only emphasizing that there was no constitutional right to the remedy which the District Court ultimately granted, but that the remedy was appropriate to relieve the constitutional deficiencies found to exist. The fallacy in that illogic is that the "right" which respondents were seeking to enforce and the "right" which the courts did enforce, was the non-existant right to improved procedures. Thus, the District Court created a remedy which did not correspond to any constitutional right in respondents against petitioners.

Respondents cite this Court's decision in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U. S. 1 (1971), for the proposition that the broad, mandatory injunctive relief granted by the district court is appropriate in this case. In that case, this Court affirmed a remedy which was designed to end perpetuation of a segregated school system. The remedy was intended to halt a continuing, specific constitutional violation of the rights of readily ascertainable persons. It was not a prophylactic remedy designed to prevent future, unspecified violations of the constitutional rights of unknown persons committed by unknown persons. The defendant officials of the school district were the very persons found to have perpetrated the violation of the plaintiffs' constitutional rights by maintaining a *de jure* dual school system. The policies of the Charlotte-Mecklenburg Board of Education were, *per se*,

violative of plaintiffs' constitutional rights, and the remedy devised in that case immediately and directly ended the unconstitutional conduct. Here, the persons who are culpable for the violation of the constitutional rights of certain plaintiffs were not before the Court, but nevertheless relief was entered against defendants who were found to have *not* participated in the violation of anyone's constitutional rights. Where the Charlotte-Mecklenburg Board of Education was found to have effectuated a deliberate policy in direct violation of the United States Constitution, precisely the opposite was found with regard to defendants here.

Furthermore, contrary to respondents' suggestions, this Court's decision in *Swann v. Charlotte-Mecklenburg Board of Education* does not authorize a remedy where plaintiffs have failed to establish a right against defendants. This Court specifically disavowed such a notion in its decision in *Milliken v. Bradley*, 418 U.S. 717 (1974), reversing a decree which (unlike the instant case) would have directly and immediately ended the constitutional violation there involved; namely, the existence of a segregated school system in the City of Detroit, Michigan. The remedy, massive inter-district busing, would have indisputedly terminated patterns of segregated education in Detroit. Nevertheless, this Court held that the remedy was improper and an abuse of the District Court's discretion because it was imposed on persons and school districts who were not found to have participated in the violation of plaintiffs' constitutional rights. 418 U.S. at 745. Furthermore, like the courts below, the District Court and the Court of Appeals in *Milliken v. Bradley* erred in premising their remedy on desirability rather than constitutionality; that is, the desirability of a certain racial balance rather than on the constitutional right there in question—the right to a unitary school system. 418 U. S. at 740, 746.

The situation is the same here. Although both the *Goode* and *COPPAR* plaintiffs averred that defendants had

implemented a departmental policy to violate the constitutional rights of citizens and had directed and encouraged police officers to violate the Constitution, the District Court expressly refused to find that any such policy, direction, or encouragement existed. The courts below took leave of the fundamental precept to the exercise of the equitable power of the federal courts as set forth in both *Swann v. Charlotte-Mecklenburg Board of Education, supra*, 402 U.S. at 16, and *Milliken v. Bradley*, 418 U.S. at 738:

> A federal remedial power may be exercised "only on the basis of a constitutional violation" and, "[a]s with any equity case, the nature of the violation determines the scope of the remedy."

II. Assuming Arguendo that any Relief Can Be Properly Granted, the Scope and Effect of the Relief Afforded by the District Court Far Exceeds that Which is Necessary to Remedy the Problems Found to Exist.

In stating the reasons for its finding of "inadequacy" in petitioners' procedures, the District Court listed four "defects" in those procedures which respondents argue are remedied by the relief granted. [A. 128a] 357 F. Supp. at 1320. However, thus viewed, the relief is clearly a remedy for conduct on the part of petitioners which both courts below emphasized did not violate the Constitution of the United States—a remedy untethered to substantive right.

However, upon assuming, arguendo, that it is proper to remedy the unconstitutional conduct of non-parties by imposing relief on party-defendants expressly exonerated from any unconstitutional conduct, it is possible to consider the appropriateness of the remedy in terms of relieving plaintiffs from the actions of the non-party misfeasors and malfeasors.[3] Viewed in such a context, it is clear that

3. Regarding the question of vicarious liability in cases brought under the Civil Rights Act of 1871, 42 U.S.C. §1983, seven of the eight Circuit Courts of Appeal considering the issue,

the remedy is at the same time prophylactic and speculative. The hope is that future, unspecified unconstitutional acts on the part of unknown police officers and directed against persons unknown, will be prevented by the revised police procedures. The price paid by the petitioners for this uncertain remedy is the District Court's arrogation of the rule making power of the Police Commissioner. Petitioners respectfully submit that the district courts are no more equipped to be police commissioners or mayors than they are equipped to be "legislative authorit[ies]", school superintendent[s]."*Milliken v. Bradley*, 418 U.S. at 744 (governors or commanders of units of the National Guard); *Gilligan v. Morgan*, 413 U.S. 1, 8, 10 (1973).

Furthermore, the district courts' findings clearly demonstrate that the remedy is unnecessary and even irrelevant to the conduct of the non-party police officers. The District Court found, from the evidence, that violation of the constitutional rights of citizens occurs most frequently in a context of improper arrest. [A. 122a, 124a], 357 F.Supp at 1317, 1318. However the Court ruled that the Consent Decree, dated December 18, 1972, entered into by defendants herein in the case of *Alexander, et al. v. Rizzo, et al.*, Civil Action No. 70-992 (E.D. Pa.), which ". . . embodies detailed provisions governing police contacts with civilians based on less than probable cause for arrest." [A.68a] 357 F.Supp. at 1292, ". . . should go far to eliminate

Footnote 3—Continued

have refused to impute liability for the unconstitutional conduct of subordinate officers to their superiors absent of finding of the superior's personal participation in or direct personal supervision of that conduct. *Dunham v. Crosby*, 435 F.2d 1177 (1st Cir. 1970); *Johnson v. Glick*, 481 F.2d 1028 (2d Cir. 1973); *Brown v. Seilaff*, 474 F.2d 826 (3rd Cir. 1973); *Madison v. Gerstein*, 440 F.2d 338 (5th Cir. 1971); *Roberts v. Williams*, 456 F.2d 819 (5th Cir. 1971); *Adams v. Pate*, 445 F.2d 105 (7th Cir. 1971); *Jennings v. Davis*, 476 F.2d 1271 (8th Cir. 1973); *Draeger v. Grand Central Inc.*, 504 F.2d 142 (10th Cir. 1974); but see *Carter v. Carlson*, 447 F.2d 358 (D.C. Cir. 1971).

many of the abuses complained of in the present cases." [A. 128a] 357 F.Supp. 1320. Moreover, insofar as the evidence indicates that the abuses complained of involve the use of excess physical force on the part of police officers, the remedy granted, by its own terms, is inapplicable to such conduct. The District Court's directive provides that citizen complaints, alleging criminal conduct on the part of a police officer (*e.g.*, assault and battery), are to be processed in accordance with a separate police directive which remains unmodified by the Court [App. to Pet. for Cert. 32a].

Therefore, even upon assuming that a court may enter relief against petitioners in order to remedy the conduct of non-parties, the district court's mandatory injunction is an overbroad usurpation of the powers of local government which, for the most part, is admittedly unnecessary.

III. The Petitioners Herein Have Consistently and Continuously Voiced Their Objections to the District Court's Unnecessary Intrusion into Internal Police Procedures.

Respondents suggest that this Court should disregard petitioners' assertions that the District Court's directive would interfere with the overall operations of the Police Department. Respondents argue that the objections were not raised below and that, in any event, there is no intrusion into the police function. The argument that the objections were not raised below is simply false, and the assertion that the Court's decree does not interfere with the operations of the Police Department is mistaken.

From the filing of the first Motion to Dismiss [A. 23a], in the *Goode* case, petitioners have consistently maintained that the relief requested by the *Goode* plaintiffs in their complaint [A. 20a-22a], and ultimately granted by the Dis-

trict Court, represented an unwarranted and improper intrusion into the exercise of discretion of the Police Commissioner. In its March 14, 1973 Opinion, the District Court held that it had the power to enter the relief contemplated by the *Goode* Plaintiffs [A. 124-5a, 127a] 357 F. Supp. at 1318, 1320. Nevertheless the District Court did not enter the relief at that time, rather, it first required the parties to submit proposals for revising police directives regarding the reception of citizen complaints and police discipline. Recognizing that petitioners made the submissions under the duress of an unappealable order, the Court required that the submissions be made entirely without prejudice, a requirement respondents now ignore. [A. 193a-194a]. Further, on two separate occasions, the Court noted that during the settlement discussions, the parties " . . . never came close to agreeing. . . ." on the revisions to be made in the directives. [A. 183a, 190a]. There were no hearings regarding the relief granted; the Court took respondents' proposal, which was first made in their complaint almost four years earlier, and implemented it. Petitioners' objections to the decree were disregarded.

Respondents also argue that the Court's directive would not interfere in any way with police operations and that the requirements of the decree are similar to existing departmental procedures. Any similarity is in form alone, certainly not in substance. In acting pursuant to the decree, the Police Commissioner is acting under threat of contempt of court. Thus, while he has the authority to modify, alter or suspend his own directives as circumstances dictate, that flexibility is lost under a court-imposed directive. Respondents fail or refuse to recognize that police administration pursuant to the mandatory commands of the Court is, *per se*, a substantial interference with departmental operations.

Again elevating form and subjugating substance, respondents suggest that the tribunal created by the decree is actually the Police Board of Inquiry. The Police Board

of Inquiry has never had the function of adjudicating the rights of citizens and of deciding issues of constitutional law. Its sole functions are to act as a fact-finding board for the Commissioner; to adjudicate questions in the realm of its own expertise, that is—whether a police officer had violated the police department's disciplinary code, and to make recommendations to the Commissioner. [A. 70a-71a] 357 F. Supp. at 1293. It is the District Court's order which creates within the Police Department a tribunal, made in the image and likeness of the feedral courts, for the purpose of adjudicating the constitutional claims of citizens against police officers.

The power and the duty to adjudicate complaints of specific acts of unconstitutional conduct on the part of police officers lies first and foremost with the federal courts. *Gilligan v. Morgan*, 413 U.S. 1 (1973); *O'Shea v. Littleton*, 414 U.S. 488 (1974). It should remain there.

Respectfully submitted,

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Assistant City Solicitor

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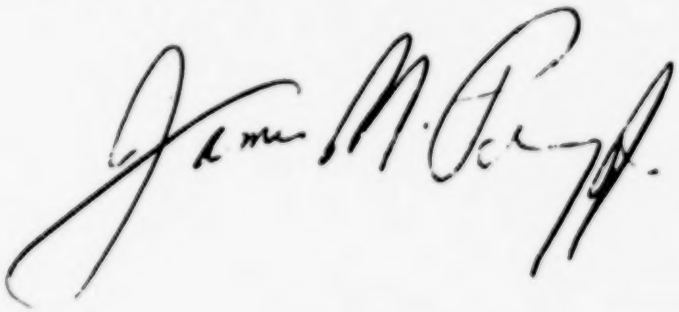
CERTIFICATE OF SERVICE

I, James M. Penny, Jr., Assistant City Solicitor and counsel for petitioners do hereby certify that 3 copies of the Reply Brief for Petitioners were served upon Peter Hern, Esquire, and William Lee Akers, Esquire, counsel for respondents on the 6th day of November, 1975.



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Supreme Court, U. S.
FILED
JUL 11 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-942

FRANK L. RIZZO, et al.,
Petitioners,

v.

GERALD G. GOODE, et al.,
Respondents.

HONORABLE JAMES H. J. TATE,
FRANK L. RIZZO, et al.,
Petitioners,

v.

COUNCIL OF ORGANIZATIONS ON PHILADELPHIA POLICE ACCOUNTABILITY AND RESPONSIBILITY, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF OF THE PHILADELPHIA BAR ASSOCIATION AS AMICUS CURIAE.

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INTRODUCTION.

This brief is filed by the Philadelphia Bar Association, a non-profit corporation whose purpose is to promote public support for reforms and improvements in procedural and substantive justice. Its members include judges of the federal and state courts, prosecutors, attorneys specializing in defense of criminal cases and attorneys practicing in other fields of law. Its representatives serve on numerous advisory committees on law enforcement and criminal justice.

All of the parties have consented to the filing of a brief in this case by the Philadelphia Bar Association as amicus curiae. The consent of each party is in the form of a letter from that party's counsel to counsel for the Philadelphia Bar Association. These letters are on file with the Clerk.

THE PHILADELPHIA BAR ASSOCIATION'S INTEREST IN THIS CASE.

The Philadelphia Bar Association is interested in this case by reason of the allegation in the complaint and the ultimate conclusion of the trial court (the Federal District Court for the Eastern District of Pennsylvania) that the Philadelphia Police Department has failed to provide an adequate system of internal review of complaints brought against police officers by private citizens. The Court of Appeals for the Third Circuit found that this was supported by the record.

Traditionally, members of the bar have been particularly aware of the need for established procedures to protect human rights. The Philadelphia Bar Association believes that respect for the police on the part of all citizens is fundamental to a peaceful and orderly society. It also recognizes that a significant number of persons in Philadelphia do not respect the police. Respect for the police must be founded on confidence that the police will act with restraint and fairness, using no more force than the situation properly calls for. This includes confidence that if an individual policeman acts improperly, he will be disciplined.

One minimal way to build public confidence in the disciplinary system is to provide procedural requirements for receiving, hearing and disposing of complaints made by citizens against individual policemen in a manner that will inspire public confidence. The Philadelphia Bar Association believes that the Order appealed from provides necessary procedural safeguards and should be affirmed.

SUMMARY OF ARGUMENT.

The trial court had the power to fashion the relief it granted, which is appropriate on the record before the Court. Further, though not on the basis of evidence which is part of the record, the Philadelphia Bar Association believes that the present need for relief is even greater than at the time of trial.

That appropriate relief ordered by a court might impose a duty on the municipality against which it is directed is not a valid reason to withhold it.

ARGUMENT.

The trial court found that "violations of constitutional rights by police do occur in an unacceptably high number of instances; that, in the absence of change in procedures, such violations are likely to continue to occur; and that revision of procedures for handling civilian complaints is a necessary first step in attempting to prevent future abuses." *COPPAR v. Rizzo,* 357 F. Supp. 1289, 1321 (E. D. Pa. 1973). It ordered defendants to submit to the court for its approval an improved citizen complaint handling mechanism, which, when approved by the court, would be required to be implemented. 357 F. Supp. at 1322.

The entire first part of the lengthy argument in petitioners' brief filed with this Court asserts the position that the trial court did not have the power to fashion this relief. Petitioners rely solely on the argument that since the proved violations of the constitutional rights of the minority citizens were not found to have been directly at the hands of the petitioners themselves, i.e., were not actually perpetrated by them, the injunctive relief against petitioners is improper. Indeed, the thrust of petitioners' entire brief is the assertion that the disciplinary procedures of the Philadelphia Police Department were found to be inadequate, but not unlawful in and of themselves, and thus should be beyond judicial interference.

Petitioners thereby completely ignore the finding by the trial court, supported by the evidence (and affirmed by the Court of Appeals), that revision of the current procedures for handling civilian complaints will, if carried out in good faith, be effective in preventing future abuses. 357 F. Supp. at 1321. The future abuses referred to are not merely unlawful abuses, but abuses of the constitutional rights of the citizens of Philadelphia who are members of minority groups. Thus petitioners' theory that no relief

should be directed against them ignores the reality that through their non-action they are just as responsible for constitutional violations as if they themselves had committed the unconstitutional acts. Failure to act can have consequences equally as serious as an affirmative act.

Petitioners have stated in their brief that the relationship between the current inadequate complaint handling procedures and the deprivation of respondents' [plaintiffs'] constitutional rights is "indirect and inferential". Petitioners' brief, 27. They have thereby tried to circumvent the conclusion reached by the trial court that the city officials have "minimized" or "avoided" the constitutional violations prepetrated by some members of the Philadelphia Police Department. 357 F. Supp. at 1318.

It is ludicrous to argue, as the city officials do here, that while they have ignored, minimized, and actively avoided dealing with the unconstitutional conduct of those they supervise, the connection between this policy of discouraging complaints and the continued unconstitutional conduct is "inferential." There can hardly be a more classic example than defendants' conduct of what is meant to be reached by the language of 42 U. S. C. 1983 which provides for equitable (and other) relief against "every person who, under color of any . . . custom . . . of any State . . . *causes to be subjected* any citizen . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws . . ." 42 U. S. C. 1983 (emphasis added).

Moreover, the Philadelphia Bar Association believes that there has been no improvement since the time of trial in 1970 in the manner in which the Philadelphia Police Department disciplines itself, and that there are still today a significant number of persons in this City who do not respect the police because of the continued policy of dis-

couraging complaints, leading directly to continued violation of the constitutional rights of minority citizens. Indeed, it seems that the situation, if changed at all, has grown worse. After a seven-month investigation by *The Philadelphia Inquirer* into police abuse of Philadelphia citizens, the conclusion drawn was that "Police abuse of citizens, once restricted to lower-class black neighborhoods, has spread through the city; complaints of policy brutality are now regularly lodged against officers in virtually every police district." *The Philadelphia Inquirer,* February 16, 1975, at 1, col. 3. That investigation also resulted in the conclusion that the number of complaints of police abuse has continued to rise every year, and that fewer than ten per cent of officially registered complaints ever reach the department's disciplinary body, the Police Board of Inquiry. *Id.* at Col. 4.

Petitioners complain that the relief fashioned by the trial court will impose an onerous burden on the Philadelphia Police Department, and describe in detail how in petitioners' view the relief granted will result in a misallocation of police personnel. Petitioners' brief 29-35. The order can hardly be described as directing a misallocation of personnel if it simply directs the police to carry out their function—the prevention and detection of crime without at the same time abusing the constitutional rights of the very persons they are supposed to protect.

A fundamental legal principle is that a court should not avoid granting a certain type of relief simply because the relief will impose an additional and expensive burden on those against whom the order is directed. See, e.g., *Goldberg v. Kelly,* 397 U. S. 254, 265-6 (1969), where this Court held that welfare payments cannot be terminated without a prior hearing, even though the requirement of a hearing was recognized as imposing an additional and expensive burden on defendant city officials. This principle is especially applicable when a branch of government, which exists only through the consent of the governed, attempts to argue that it will be too "difficult" for it to institute a procedure by which it might reduce the violations of the rights of those for whose benefit it exists.

Petitioners' have also suggested that the relief fashioned by the trial court amounts to supervising the functioning of local government. Petitioners' brief, 27. They thereby ignore the reality that the trial court has ordered a branch of local government to implement certain procedural safeguards in supervising itself. Such an order, as described by the Court of Appeals below, is "limited and moderate in tone. . . ." *Goode v. Rizzo,* 506 F. 2d 542, 547 (3d Cir. 1974).

The Court of Appeals for the Third Circuit in *Lewis v. Kugler,* 446 F. 2d 1343 (3d Cir. 1971), cautioned that a court, faced with a case such as this, must balance two major considerations where they diverge or conflict—the protection of constitutional rights, and the protection of as much autonomy for state and local governments as possible. 446 F. 2d at 1352.

The trial court in this case has given full consideration to both concerns in ordering the relief granted.[1] The real thrust of this relief is not so much an intrusion by the trial court into the actual daily administration of the Philadelphia Police Department as it is an aid to department officials by which they might keep their own house in order. The trial court used remarkable restraint in simply directing the Philadelphia Police Department to use a minimal procedure for internal discipline (and thereby,

1. "[I]ntrusion into this sensitive area [police department procedures] should be limited, and should be directed toward insuring that the police themselves are encouraged to remedy the situation." 357 F. Supp. at 1320.

hopefully, reduce future abuses), rather than subjecting the department to ongoing civilian or court review.

There is ample evidence in the record before this Court of the antagonism in minority communities towards the police which reverberates beyond them to municipal government and to society in general. The events of recent years in Philadelphia have made imperative the trial court's wise exercise of its power to lay upon the troubled state of police-community relations the moderating influence of procedures designed to reduce the friction generated by the current lack of procedures.

CONCLUSION.

The modest procedural safeguards directed by the trial court below and affirmed by the Court of Appeals will serve both the integrity of the law enforcement system and the security of the community against the arbitrary exercise of policy authority.

The record before this Court amply supports the limited equitable relief granted by the courts below. The Order should be affirmed.

Respectfully submitted,

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IN THE

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October Term, 1975.

No. 74-942.

FRANK L. RIZZO, et al.,

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v.

COUNCIL OF ORGANIZATIONS ON PHILADELPHIA
POLICE ACCOUNTABILITY AND RESPONSIBILITY, et al.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR GREATER PHILADELPHIA MOVEMENT AS AMICUS CURIAE.

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INTEREST OF THE AMICUS CURIAE.

This brief is filed on behalf of The Greater Philadelphia Movement (GPM), an organization of persons holding responsible positions in business, finance, organized labor, the professions, education, and civic affairs, whose goals include social, governmental and economic improvement in the Greater Philadelphia area.[1]

Our reason for filing this brief is our conviction that the injunctive relief granted in the cases here on appeal goes to the heart of effective law enforcement, i.e. public respect for the police. If the public are to respect the police, the police, in turn, must treat members of the public with respect, restraint and fairness. Not only do citizens have a right to expect such treatment, they also have a right to expect that policemen who act otherwise will be brought to account. Failure to discipline an officer who acts oppressively cannot but be taken as sanctioning police oppression.

The District Court found that members of the Philadelphia police do, on occasion, act oppressively, particularly toward black people. The Court also found that existing procedures for handling complaints of such misconduct are totally inadequate. To correct that situation, the Court ordered the police department to adopt wholly new procedures conforming to substantive standards established by the Court. The Court of Appeals for the Third Circuit affirmed the District Court's opinion.

We are not in a position to assess the correctness of the District Court's findings as to the incidents of oppression and the inadequacy of existing remedial procedures. But assuming those findings are correct, our purpose is to endorse the relief fashioned by the District Court and

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1. GPM also filed a brief amicus curiae with the District Court in the *Goode* case, one of the two cases here on appeal, and with the Court of Appeals in both cases here on appeal.

approved by the Court of Appeals and to ask this Court to sustain that relief. We believe it appropriate for GPM to express its views on this point in order to forestall any argument that the District Court's order constitutes unwarranted judicial legislation. In our view the order is warranted, appropriate, and well within the equity power of a Federal court.

SUMMARY OF THE ARGUMENT.

The relief granted by the District Court is well within the equitable powers of the federal courts in administering the Civil Rights Act. Such relief serves to protect Philadelphia residents from unconstitutional behavior of city officials and is necessary to guarantee trust by minority groups in a vital public institution.

ARGUMENT.

1. The District Court's Relief Is Supported by Precedent.

We start with the proposition that these cases involve repeated violations of constitutional rights in an area of great public concern. The Supreme Court decision that best illustrates the permissible scope of equitable relief in such cases is *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U. S. 1 (1971).

In *Swann* there had been a finding of systematic school segregation, and the principal issue before the Supreme Court was the propriety of the relief. The District Court, after giving the recalcitrant school board several chances to submit a satisfactory desegregation plan, ordered the board to desegregate under a comprehensive plan devised by a court-appointed expert. The Court of Appeals struck down two important mandatory provisions of the District Court's plan. The Supreme Court reinstated these provisions, saying:

> "Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." (402 U. S. at 15)

Justice Stewart's concurring opinion in *Millikin v. Bradey*, 418 U. S. 717, 753-757 (1974), reaffirms *Swann's* holding of the availability of a federal court's broad equitable relief to correct a condition which offends the Constitution, and that ". . . the nature of the violation determines the scope of the remedy."[2] The remedy fashioned by the district court in the case at bar is totally justified by the nature of the constitutional violation found.

2. 418 U. S. at 757, quoting from *Swann*, 402 U. S. at 16.

In the instant cases the District Court found repeated violations of constitutional rights of equal gravity with those involved in *Swann*. Like the District Court in *Swann*, it gave the defendants ample opportunity to mend their ways. Only when this proved unavailing did the District Court establish standards of its own, and in so doing it took pains to assure that they would be reasonable, feasible and workable as required by *Swann*.

The fact that *Swann* grew out of school segregation rather than police oppression is not distinguishing. The Supreme Court said that:

> ". . . a school desegregation case does not differ fundamentally from other cases involving the framing of equitable remedies to repair the denial of a constitutional right. The task is to correct, by a balancing of the individual and collective interests, the condition that offends the Constitution." (402 U. S. at 15-16)

It is well established that Federal courts have the power to enjoin unlawful conduct by police departments. See *Hague v. C. I. O.*, 307 U. S. 496 (1939).

2. The District Court's Order Promotes the Public Interest.

The public interest in improving police-community relations would seem to be self-evident. It has been described by Judge Sobeloff, writing for the Fourth Circuit Court of Appeals *en banc*, thus:

> "The police department is society's instrumentality to maintain law and order, and to be fully effective it must have public confidence and cooperation. Confidence can exist only if it is generally recognized that the department uses its enforcement procedures with integrity and zeal, according to law

and without resort to oppressive measures. Law observance by the police cannot be divorced from law enforcement. When official conduct feeds a sense of injustice, raises barriers between the department and segments of the community, and breeds the disrespect for the law, the difficulties of law enforcement are multiplied." *Lankford v. Gelston*, 364 F. 2d 197, 204 (1966)

The importance of a civilian complaint procedure in achieving good police relations with the black community has been described by a deputy assistant Attorney General of Massachusetts as follows: [3]

"A final element of the blacks' belief in their second-class citizenship is the inadequacy of the present police complaint procedures. The black and the poor, because they have little political influence, are almost never able to exert pressure for intra-departmental disciplining. Therefore the black citizen, when he feels that he has been wronged by the police, must make his protest through police complaint bureaus."

After describing certain obstacles to the filing of complaints not present in the instant case, the author proceeds to describe shortcomings in the disposition of complaints, once they are filed, in words reminiscent of the findings of the District Court:

"Should a citizen overcome these initial obstacles and file a complaint, there is no assurance that his interest will be adequately represented when the complaint is investigated and heard. Furthermore, he is not likely

3. Condlin, "Citizens, Police and Polarization: Are Perceptions More Important Than Facts?", 47 Journal Urban Law 653, at 657-58 (1970).

to learn of the disposition of his case and in most instances will not have the opportunity to appeal an adverse decision to a non-police agency. With these inadequacies, it is not surprising that most black residents feel that it does no good to complain."

With respect to the social consequences of an inadequate complaint procedure that does not command community respect, the author has this to say:

"A dangerous consequence of the closing of grievance channels, however, is that it intensifies the blacks' feeling of alienation and powerlessness. The truly second class citizen is the one who not only is abused by others but who also is incapable of fighting back. Furthermore, the lack of a workable complaint system reinforces the notion that there are no existing structures through which the black man can legitimately prosecute his grievances. Such a lack also supports the proposition that if wrongs are to be redressed they must be done so in an extra-legal fashion. This in turn, adds fuel to a growing philosophy of violence."

The District Court's order is directly responsive to the public interest described by these authorities. It will assure citizens that their complaints will be heard expeditiously, inexpensively and fairly. Furthermore, by mandating a wholly internal procedure, the District Court minimized intrusion upon the police department and adverse effects on police morale. Indeed, as the Court said, its guidelines "afford protection to the accused policeman as well as the complaining civilian."

CONCLUSION.

A review of the District Court's order can lead to only one conclusion: that all citizens of Philadelphia, including policemen, will benefit from the civilian complaint procedure mandated by that Court.

We respectfully urge this Honorable Court to reaffirm the judgment entered by the District Court and affirmed by the Court of Appeals.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-942

FRANK L. RIZZO, *et al.*,

Petitioners,

v.

GERALD G. GOODE, *et al.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF *AMICUS CURIAE* OF THE N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

NO. 74-942

FRANK L. RIZZO, *et al.*,

Petitioners,

v.

GERALD G. GOODE, *et al.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF *AMICUS CURIAE* OF THE N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

Interest of *Amicus**

The N.A.A.C.P. Legal Defense and Educational Fund, Inc., is a non-profit corporation, incorporated under the laws of the State of New York to assist blacks to secure their constitutional rights through the courts. Its charter declares that its purposes include rendering legal aid gratuitously to blacks suffering injustice by reason of race who are unable, on account of poverty, to employ legal counsel on their own behalf. The charter was approved by a New York court, authorizing the organiza-

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* Letters of Consent from counsel for the petitioners and respondents in this case have been filed with the Clerk of the Court.

tion to serve as a legal aid society. The N.A.A.C.P. Legal Defense and Educational Fund, Inc., is independent of other organizations and is supported by contributions from the public. For many years its attorneys have represented parties in this Court and the lower courts, and it has paticipated as *amicus curiae* in this Court and other courts.

Since its inception, the Legal Defense Fund has acted as counsel in numerous federal court cases seeking redress on behalf of its black clients for acts of police misconduct and abuse.** Through its involvement in such litigation, the Fund has concluded that certain recurrent problems of police misconduct toward citizens, particularly members of black and other minority communities, cannot be resolved meaningfully in every instance by reliance upon the so-called traditional techniques of seeking damages for individuals subjected to police misbehavior, as in *Jenkins,*** or obtaining injunctive-declaratory relief with respect to discrete albeit concerted, acts of police lawlessness, as in *Lankford.*** For what such suits fail to address is the extent to which institutional reluctance by some police departments to establish efficient, open and fair procedures for the receipt, investigation and disposition of citizens complaints of police misconduct itself serves to encourage repeated acts of misconduct toward citizens by those relatively few officers in each department prone to exceed their lawful authority. Such suits often tend to confront and eradicate only the manifestations not the root causes of police abuse and misconduct. Consequently, in several recent lawsuits, the Legal Defense Fund has sought federal court orders requiring the defendant police departments to establish or

** E.g. *Brazier* v. *Cherry,* 293 F.2d 401 (5th Cir.), *cert. denied,* 368 U.S. 921 (1961); *Lankford* v. *Gelston,* 364 F.2d 197 (4th Cir. 1966); and *Jenkins* v. *Averett,* 424 F.2d 1228 (4th Cir. 1970).

reform departmental procedures for handling citizen complaints of misconduct. Three of those suits were settled before judgment on the basis of police department agreements to create effective complaint procedures*** and two such suits are still pending.****

In this litigation, the Court is presented with the question of whether the trial and appellate courts acted within their constitutional authority to remedy claims of continuing police misconduct by requiring the Philadelphia Police Department to establish new citizen complaint procedures. The decision in this case as to the propriety of the remedy ordered must turn on the facts particular to the Philadelphia situation. What the Court does here, however, may have a dispositive effect upon federal suits such as those brought by the Fund seeking reform of police procedures. Moreover, it may determine the ability in the future of the federal judiciary to respond effectively and creatively to varieties of police misconduct that experience has taught may not be remediable by individual damage or prohibitory injunctive relief actions. Mindful of the potentially wide-reaching impact upon police litigation of the Court's decision in this case, the Legal Defense Fund would like to bring to the attention of the Court several considerations it believes justify an affirmance of the judgment below.

*** *Coalition of Black Leadership* v. *Doorley,* No. 4523 (D.R.I. 1971); *Ridgeway* v. *Thompson,* No. 2893 (M.D. Ga. 1974); and *Boyd* v. *Gullet,* No. 72-1278K (D.Md. 1972).

**** *Coleman* v. *Klein,* No. 73-Civ-1857 (E.D.N.Y. 1973) and *Clark* v. *Carson,* No. 74-162-Civ.-J-T (M.D. Fla. 1974).

Introduction

In this litigation, the trial court determined that a causal nexus existed between the lack of effective procedures for dealing with citizen complaints and the recurrence of acts of misconduct by certain members of the Philadelphia Police Department. It concluded, therefore, that an effective and appropriate response to the constitutional violation was to require the Department to establish new mechanisms for ensuring that citizen complaints would be handled quickly, fairly and openly.

We respectfully submit that the Court of Appeals for the Third Circuit was correct in affirming the trial court's judgment and that this Court should find accordingly. It is well-recognized that individual damage and prohibitory injunctive relief actions have enjoyed limited success in preventing the recurrence of police misconduct and it is equally acknowledged that the type of institutional inaction that the trial court found with respect to the Philadelphia Department provides an environment in which police misbehavior tends to occur inordinately. In view of these considerations, we believe that the lower courts approved a remedy that was temperate, measured and necessary to meet the constitutional violations to which the respondents had been subjected and to reduce the likelihood that such violations would recur.

Argument

Traditional approaches to controlling police misconduct through federal litigation are inadequate in two major respects. First, they have certain inherent weaknesses which often thwart any meaningful redress for illegal

police activity. Police officers defendants are usually judgment-proof,[1] which means that even successful damage actions never result in any actual compensation to plaintiffs. Supervisory police officers cannot be held liable for misconduct of their subordinates in view of limitations placed by most courts upon the *respondeat superior* doctrine in § 1983 actions.[2] And, of course, governmental entities—the "deep pockets"—are immune to § 1983 damage actions.[3] Injunctive actions have proven no more effective. Generally framed in broad "thou shalt not" terms, they fail to convey to defendant police officers exactly what they can and cannot do[4] and contain no meaningful monitoring provisions,[5] two defects that make enforcement of these injunctions through use of the contempt power nearly impossible. Some commentators felt that injunctions running against municipalities themselves might prove more effective in precluding repeated acts of police misconduct.[6] This Court's decision in *City of Ke-*

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[1] *Lankford* v. *Gelston*, 364 F.2d 197, 202 (4th Cir. 1966); *Mapp* v. *Ohio*, 367 U.S. 643, 670 (1971); Foote, *Tort Remedies for Police Violations of Individual Rights*, 39 Minn. L. Rev. 493 (1955) and Hall, *The Law of Arrest in Relation to Contemporary Social Problems*, 3 Univ. of Chi. L. Rev. 345, 346-353 (1936). The President's Commission on Law Enforcement and Administration of Justice: *Task Force Report: The Police* (1967) at 199.

[2] *Boyden* v. *Troken*, 352 F.Supp. 722 (N.D. Ill. 1973).

[3] *Monroe* v. *Pape*, 365 U.S. 167 (1961).

[4] See generally, Note, *The Federal Injunction as a Remedy for Unconstitutional Police Conduct*, 78 Yale L.J. 143 (1968).

[5] See generally, Note, *Use of § 1983 To Remedy Unconstitutional Police Conduct: Guarding the Guards*, 5 Harv. Civil Rights-Civ. Lib. L. Rev. 104 (1970) in which the use of monitors to oversee the enforcement of federal court injunctions is proposed.

[6] As one observer has noted:

> If the plaintiff seeks to enjoin harassment by municipal law enforcement officers, an injunction against the municipality offers him blanket protection. The plaintiff may be unable to

nosha v. *Bruno*,[7] extending the *Monroe, supra* concept of municipal immunity in 42 U.S.C. § 1983 damage actions to equitable suits, however, obviated any further reliance upon that approach.

But these approaches attack only the manifestations, not the root causes of police misconduct in America today. Rather than revealing the realities of police behavior, they tend to perpetuate outmoded premises and assumptions with respect to the scope and character of police lawlessness. For such suits, whether for damages or injunctive relief, tend to treat only discrete acts of misconduct, i.e. those involving specific policemen and specific citizens, generally occurring within a limited time period and within a restricted geographical area. That incidents of police brutality and abuse are caused by a few "bad-apple cops" acting without the permission, knowledge or consent of their superiors, that persons who have just grievances can get relief in the courts or through pursuing administrative remedies, that police department superior

identify the policemen directly responsible for past harassment, or they may be too numerous to join as parties. Injunctive relief against those individuals would undobutedly not reach policemen uninvolved in previous deprivations of civil rights. An injunction issued to the police commissioner would prevent authorized harassment but might not include police officers acting contrary to department policy and beyond the control of the commissioner. A decree against the department would bind all the police but might not prevent civil rights violations by other law enforcement agencies such as the sheriff's office. Equitable relief against the municipality, however, provides the broadest possible protection for civil rights secured by the Constitution and laws of the United States because it reaches every city official or employee with notice of the injunction who might violate those rights.

Note, *Injunctive Relief Against Municipalities Under Section 1983*, 119 U. of Pa. L. Rev. 389, at 391 (1970).

[7] 412 U.S. 507 (1973).

officers are committed to controlling misconduct and have created effective internal mechanisms to discipline offending subordinates are among the commonly held views that, though often false, are rarely tested in traditional 42 U.S.C. § 1983 police litigation.

Strong evidence exists to support the conclusion that police verbal abuse and brutality occur with some regularity in major urban centers. In the course of conducting a field study on police behavior in 1966, observers reported that police used clearly unnecessary or exessive amounts of force against citizens in 37 out of 3826 encounters they witnessed, concluding that "there should be little doubt that in major metropolitan areas the sort of behavior commonly called 'police brutality' is far from rare.[8] The Presidential Commission for which the field studies were prepared adopted similar findings into its official report.[9] And, though it has been contended that

[8] Reiss, "Police Brutality—Answers to Key Questions", *Transaction*, at 10-19 (July-August, 1968) (hereinafter, *Reiss*). The National Advisory Commission on Civil Disorders indicated that 3/10 of 1% of some 5,339 observed police-citizen contacts involved excessive or unnecessary force. *Report*, at 302 (Bantam Books ed., 1968). But as Ginger & Bell indicate in their *Police Misconduct Litigation—Plaintiff's Remedies*, 15 Am. Jur. Trials 555 (1968), 3/10 of 1% of the nearly 5 million arrests made annually would result in 15,000 excessive force arrests each year. *Id.*, n.9, at 561.

[9] The President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (Government Printing Office 1967), stated:

> . . . The Commission does have evidence from its own studies and from police officials themselves, that in some cities a significant percentage of policemen assigned to high crime areas do treat citizens with disrespect and, sometimes, abuse them physically.

at 115, see also, Westley, *Violence and the Police* (1970), at 99-104 (hereinafter, *Westley*).

physical brutality does not represent a major problem,[10] the consensus of informed observers is that verbal abuse and disrespect,[11] aggressive, field interrogations,[12] searches[13] and illegal arrests[14] continue to characterize police behavior, particularly in minority communities.[15] One recent study conducted by a Chicago blue ribbon

[10] The President's Commission on Law Enforcement and Administration of Justice: *Task Force Report: The Police* (1967) at 181 (hereinafter, *Task Force Report*).

[11] Black and Reiss, "Patterns of Behavior in Police and Citizen Transactions". II *Studies of Crime and Law Enforcement in Major Metropolitan Areas,* at 97 (1967), (hereinafter, *Black and Reiss,* 374; Terris, *Annals of the American Academy of Politics and Social Science* (1967), at 66; United States Commission on Civil Rights, *Mexican-Americans and the Administration of Justice in the Southwest.* (1970), at 8.

[12] *Task Force Report,* at 183-185.

[13] *Black and Reiss* at 82, 85, 90, Chevigny, *Police Power:* Police Abuses in New York City (1969) at 205-206, 208; (hereinafter, *Chevigny*) *Task Force Report,* at 185.

[14] *Task Force Report,* at 186-187, *Chevigny* at 219-220; La Fave, *Arrest: The Decision to Take a Suspect Into Custody* (1965) at 295-296.

[15] See generally, National Capital Area Civil Liberties Union, *A Police Department in Trouble: Racial Discrimination and Misconduct in the Police Department of Washington, D.C.* (1968); and United States Commission on Civil Rights, *Mexican-Americans and the Administration of Justice in the Southwest* (1970) President's Commission on Crime in the District of Columbia, *Report,* (1966) at 203-208. Also, Wolfgang and Cohen, *Crime and Race,* (1970); Rinella, *Police Brutality and Racial Prejudice: A First Close Look,* 45 J. Urban. L. 773 (1968) and Comment, *Socio-Legal Aspects of Racially-Motivated Police Misconduct,* 71 Duke L.J. 751 (1971). *Chevigny* at 285-287; Cray, *The Big Blue Line* (1967) at 173-176 (hereinafter *Cray*); and Bayley and Mendelsohn, *Minorities and the Police* (1969) at 130-132.

For the most comprehensive compilation to date of studies, reports and monographs on the nature and scope of police misconduct, see Hirshfeld, *Abuses of Police Authority,* Bureau of Social Science Research, Inc. (Washington, D.C. 1970).

panel convened by Congressman Ralph H. Metcalfe observed:

> There can be no dispute that police mistreatment of citizens occurs . . . But such statistics (on the high percentage of black citizens killed by policemen each year in Chicago) reflect only the iceberg tip of the problem of abusive police conduct. They say nothing of the many instances in which victims do not complain at all because they are convinced that it would be futile. Nor do such statistics reflect the false arrests, the illegal searches or the more common kind of psychological violence that occurs daily, especially in exchanges between police and minorities or young people. (Members of the Brown community, in addition to their minority status, frequently suffer harassment over their citizenship or residency status.) Very few young Blacks and Browns have been spared the experience of having to swallow their pride and take a bullying insult from a police officer. *The Metcalfe Report on the Misuse of Police Authority in Chicago* The Chicago Defender, July 1973 (Special Supplement at 8.

The victims of police misconduct are usually persons enjoying little credibility in the community.[16] And even those citizens whose complaints of illegal police conduct would ordinarily be entitled to belief are often arrested

[16] Studies have identified such "pariah" groups as hippies, homosexuals, political activists (particularly of the left), derelicts, prostitutes, narcotics users, drunks and persons with police and prison records as traditional targets of police abuse and brutality. *Chevigny* at 114; *Reiss* at 17-18, *Task Force Report* at 187-188 and *Cray,* at 148-152.

on "cover charges" in order to destroy the probativeness of their testimony.[17]

Furthermore, such police abuse and brutality cannot be explained merely by invocation of a "bad apple cop" theory, i.e., that only a small minority participate in or condone illegal conduct toward citizens. For, police abuse and brutality often grow out of an institutional matrix that encourages, condones, protects from external criticism and, sometimes, even rewards such misconduct. Support manifests itself in many ways. First aggressive behavior by police officer is often regarded by line patrolmen and superior officials alike as "good police work". Where an officer is acting in his official capacity, particularly in making an arrest, or quelling a disturbance, department officials tend to condone or, at least "wink at" the use of excessive force or abusive conduct.[18] Fellow officers, even those who dis-

[17] A "cover charge" is an arrest—generally for disorderly conduct, resisting arrest, or assault of a police officer—of a person who has been the victim of police abuse or brutality in order to protect the officer involved from civil or criminal liability. Such charges tend to destroy the victim's credibility and to dissuade him from filing an official complaint altogether. See *Chevigny* at 25-26, 18, 141-146, 287. The Chicago panel observed:

> In serious instances of abusive police conduct, the police constantly place criminal charges to justify their conduct and put the citizen-victim on the defensive. The use of the same three criminal charges—disorderly conduct, resisting arrest and battery against a police officer—is so constant that lawyers and community workers familiar with such cases refer to this group of criminal charges as the "holy trinity". *Metcalfe Report* at 8; see also, *Cray* at 175-176, 178-182.

[18] *Chevigny*, pp. 276-279; *Skolnick, Justice Without Trial* (1967) at 219-225. The *Metcalfe Report* described this factor in the following terms:

> It is basic law enforcement policy of the Police Department that aggressive police conduct toward citizens is desirable and legitimate.
>
> Abusive treatment of a citizen is viewed as merely overzealous conduct within the scope of accepted police behavior. *Id*, at 8.

approve of illegal conduct, generally make no effort to prevent such occurrences and are loath to resort to internal departmental procedures to see that the offending policeman is disciplined.[19] However, the most blatant and significant indicators of institutional support for police misconduct can be found in the way internal disciplinary procedures are designed and utilized to deter citizens from filing complaints,[20] to shield offending officers from identification and to avoid the imposition of any sanctions for

Two psychologists with first-hand knowledge of selection procedures employed by the Chicago Police Department testified in hearings held by the Metcalfe Panel that "when emotional and personality defects were discovered in a probationary policeman, the person is not removed from duty, but assigned to a "stress area"—an area which has a high crime rate and where the policeman get a lot of street experience first. The purpose is to make them or break them during their probationary period on the street", *Metcalfe Report*, at 6. It is interesting to note that many of the findings made by the *Metcalfe Report* were subsequently corroborated by *The Chicago Tirbune* after a five-month investigation of 500 alleged incidents of police misconduct. *Police Brutality* (A special *Tribune* supplement reprinting an eight-part series of articles appearing in its November, 1973 daily editions.) See also *Task Force Report* at 165. Levine, *Implementing Legal Policies Through Operant Conditioning: The Case of Police Practices*, 6 Law and Soc. Rev. 195, 214-215 (1972). But see, Balch, *The Police Personality: Fact or Fiction*, 63 J. Crim. L., C. & P.C. 106 (1972) for survey of conflicting views on the nature of police attitudes.

[19] One study showed that in more than one-half of all instances of undue force at least one other policeman was present who did not participate in the use of force, but also did not report it. *Reiss* at 18; Stoddard, *The Informal "Code" of Police Deviancy: A Group Approach to "Blue-Coat Crime"*, 59 J. Crim. L., C. & P.C. 201 (1968); and *Westley* at 109-138.

[20] Citizen complainants are often charged with filing "false reports", told they must swear to complaints under oath, thereby risking being charged with "false reporting", served with cover charges and generally subjected to a welter of harassment and bureaucratic red tape sufficient to deter all but the most tenacious and courageous person. *Task Force Report*, at 196.

such abuse.[21] Internal disciplinary mechanisms exist primarily to maintain police department discipline, not to redress citizen complaints of police misconduct.[22]

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[21] Numerous studies have described the relative secrecy in which police department disciplinary procedures are carried out. As the Metcalfe Panel indicated:

> The entire handling of citizens' complaints against policemen is secret. Not only is the public completely excluded from any access to information, but the complainant himself receives no information whatsoever about the evidence obtained in an investigation, the manner in which it is evaluated, the reasons for a decision, or (in the rare case where a complaint is sustained) the penalty imposed. Until very recently he was not even informed of whether his complaint was sustained or not. *Metcalfe Report,* at 8-9.

See also, *Reiss* at 19, *Task Force Report* at 196; *Law Enforcement: The Matter of Redress,* Report by the American Civil Liberties Union of Southern California (Institute of Modern Legal Thought, 1969) at 19 (hereinafter *ACLU Report*); Neiderhoffer, *Behind the Shield* (1967) at 5. Note *The Administration of Complaints by Civilians Against the Police,* 77 Harv. L. Rev. 499, 505-508 (1963) Reiss and Bordua, "Environment and Organization: A Perspective on the Police," at 39 in Bordua, *The Police: Six Sociological Essays,* (1967); and, *Cray,* at 202-203.

[22] For the years 1965, 1966 and 1967, 5.2%, 5.3% and 11.4% of the complaints by citizens of excessive force against Los Angeles Police Department officers were sustained; yet for the same years 81.2%, 80.6% and 79.9% of the "neglect of duty" charges brought by fellow officers were upheld. *ACLU Report,* at 22-23. A 1970 study of the New York Police Department observed:

> . . . [O]ur findings raise doubts about the effectiveness of the Department's routine operations for dealing with police misconduct, especially criminal and civilian complaints. On balance, they suggest that the Department's formal disciplinary system is better suited for handling violations of internal rules and procedures that disrupt the normal and routine operations of the force than for responding effectively to complaints where individual citizens or the community at large are victims.

The New York City Rand Institute, *The Police Internal Administration of Justice in New York City* (November 1970). For the personal evaluations and recommendations of the author of the Rand Study, see Cohen, *The Internal System of Justice in New York City,* 63 J. Crim. L. C. & P. S. 54 (1972). And the *Metcalfe Report* found as follows:

> (Citing statistics.) These statistics show that complaints of abusive conduct were rejected 98.6 percent of the time by the Police Department. . . . The statistics also show that the Department is almost twenty times as likely to sustain a complaint against an officer if the complaint involves some other type of misconduct. This demonstrates that the police discipline system is far more lenient about abusive conduct toward citizens than it is about transgressions against its internal command authority. *Id.,* at 8.

As the foregoing discussion indicates, the institutional failure of many police departments to deal forthrightly and promptly with the problem of misconduct by its officers toward citizens provides a context within which further abuse and illegal conduct is likely to occur. Many police departments have already recognized the importance of institutional responsiveness to citizen complaints and have moved to create good faith mechanisms for handling such matters, without any apparent disruption of their law enforcement functions. In fact, consent decrees resolving litigation handled by the Legal Defense Fund in Providence, R.I., Macon, Georgia and Prince George's County, Md., have contained provisions for changes in citizen complaint mechanisms within the affected police departments very much like those ordered by the trial court in this lawsuit. In each, new police department regulations provided for 1) printed and easily obtained citizen complaint forms; 2) receipt and investigation of citizen complaints by a special section of the police department; 3) written investigatory reports; 4) an opportunity for a hearing before an impartial person or board within the department; 5) written decisions with respect to whether disciplinary action would be taken; 6) maintenance of citizen complaints and their disposition in the personnel files of individual officers. And in all three instances, the new procedures were designed to ensure that citizen complainants received

adequate information as to the investigatory process, periodic reports on the status of investigations of their complaints and notice with respect to the ultimate departmental dispositions of charges lodged by them. [Copies of consent orders in *Coalition of Black Leadership* v. *Doorley* (Providence) and in *Ridgeway* v. *Thompson* (Macon) and the joint motion of the parties agreeing to dismissal of *Boyd* v. *Gullett* (Prince George's County) and the new departmental citizen complaint procedures adopted in each department are included in the Appendix hereto for the Court's information].

No one can quarrel, certainly, with the proposition that problems of police misconduct should be left in the first instance to police departments, themselves, to resolve. But where there has been an abdication of a police department's constitutional duty to see that citizens are protected, not victimized, by law enforcement personnel, *Byrd* v. *Brishke*, 466 F.2d 6, 11 (7th Cir. 1972), federal courts must provide aggrieved citizens with a remedy which will so far as possible eliminate the unconstitutional effects of past police misconduct as well as bar like misconduct in the future. *Louisiana* v. *United States*, 380 U.S. 145, 154 (1965). A police misconduct case, to quote the Court in another context, does not

> . . . differ fundamentally from other cases involving the framing of equitable remedies to repair the denial of a constitutional right. The task is to correct, by a balancing of the individual and collective interests, the condition that offends the Constitution. *Swann* v. *Charlotte-Mecklenburg Board of Education*, 401 U.S. 1, 15 (1971).

Here, the trial court found that the Philadelphia Police Department's failure to establish and implement meaningful procedures to handle citizen complaints played a role in fostering periodic incidents of police misconduct. Its finding—one not unlike those made by various Presidential and governmental commissions and by numerous students of police-citizen-relations—fully justified the court in ordering the remedy at issue here. For the problem it identified was an institutional one requiring an institutional solution.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals for the Third Circuit should be affirmed.

Respectfully submitted,

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APPENDIX

Judgment

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF RHODE ISLAND

THE COALITION OF BLACK LEADERSHIP, an Unincorporated Association, by its President, Michael Van Leesten, CURTIS MORRIS; JOSEPH L. COSTA; RICHARD METTS; RONALD GRAY; ALICE PENNINGTON; and BARBARA ARAUJO, on behalf of themselves and those similarly situated,

Plaintiffs,

VS.

JOSEPH A. DOORLEY, JR., Mayor of the City of Providence; HARRY GOLDSTEIN, Commissioner of Public Safety of the City of Providence; WALTER A. MC QUEENY, Chief of Police of the City of Providence, CAPT. STEPHEN M. MARONEY, JR., Director of Personnel and Community Relations of the Police Department of the City of Providence, ANTHONY CALICHIA, a police officer of the City of Providence and, PROVIDENCE LODGE #3, FRATERNAL ORDER OF POLICE,

Defendants.

This is an action brought by the Plaintiffs against the named Defendants under the provisions of the United States Code, namely 42 U.S.C. Sections 1981, 1983, 1985, 1986 and 1988. Jurisdiction in this United States Federal District Court is by virtue of the Federal Statutes concerned and is conceded by the parties. The case came on for trial and was heard by the Court, Chief Judge Raymond J. Pettine sitting without a jury. Testimony and evidence

was taken and after arguments of counsel, the trial was concluded. Thereafter, the case was held for the submission of post-trial legal memorandum by counsel and for decision of the Court.

By agreement of all parties, counsel have submitted to the Court, for entry, this Consent Judgment. Same is approved for entry by the Court, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

1. The Providence Police Department shall adopt for use a uniform civilian complaint form to be available for use by any civilian wishing to lodge a complaint against any member of the Providence Police Department. The complaint form shall include space for the following information: the name, address and telephone number of the complainant and, witnesses to the alleged incident giving rise to the complaint; the nature, time and place of the alleged incident; the name, number, rank and detail of the officer or officers believed to be involved. Complaint forms shall be available to any citizen, or their representative, at the office of the Personnel Bureau; the front entrance desk at the Providence police station and at the offices of the Human Relations Commission. Complaints may be filed in person by any citizen, or may be completed and mailed, to the Bureau of Personnel.

Upon receipt of a complaint the Bureau of Personnel shall note thereon the date and time of receipt and shall notify the person designated therein as the complainant or his representative, whose name appears thereon, at the address given, by certified mail of the receipt of the complaint and the name of the officer assigned to investigate same. The complaint shall then be assigned by the Bureau of Personnel to an investigating officer from the Bureau.

The investigating officer shall investigate the complaint, and shall interview all persons named in said complaint either as parties or witnesses and any other persons having information concerning the subject matter of the complaint. The investigation shall be completed within thirty (30) days and a written report, including all statements, documents examined and other evidence taken shall be filed with the Director of the Personnel Bureau. For cause shown, an investigating officer may request an additional thirty (30) days within which to complete his investigation. If granted, the complainant shall be notified of this fact by the investigating officer.

The Director of Personnel, upon the filing of the complaint investigation, shall thereupon select an officer above the rank of sergeant as the hearing officer on the complaint. A hearing on the complaint shall be mandatory and notice of the time, date and place of hearing shall be given to all parties and their representatives at least ten (10) days prior to the hearing date. Notice shall be by certified mail.

The hearing held by the hearing officer will be informal. The investigating officer and any officers complained against shall attend. All parties may be represented by counsel or other authorized representative and shall have the right to present evidence and examine witnesses. A stenographic record shall be kept and shall be available, at cost, to any party to the proceedings requesting same.

The hearing officer, after hearing, shall make written findings of fact and based thereon shall find the police officer or officers complained against either "guilty" or "not guilty". If a complainant fails to appear at the hearing, the hearing officer shall make a notation thereof on the complaint and enter a "not guilty" finding. A complainant failing to appear on a complaint upon which a "not guilty"

finding was made may, for good cause shown, request the Director of the Personnel Bureau to reschedule a new hearing, at any time within one (1) year from the date of receipt of the complaint, and the Director, in his discretion, grant such request and reschedule a hearing on the original complaint.

Copies of the hearing officer's findings shall be transmitted to all parties and to the Chief of Police. The Chief of Police may approve or reject the decision made within thirty (30) days thereof. If rejected, the Chief of Police may, in his discretion, submit charges against the officer or officers in accordance with existing Department Disciplinary Procedures and, a copy of the Chief's action on the decision shall be noted in the personnel file of the officer involved. The action of the Chief of Police on the hearing decision shall be noted thereon, and he shall notify all parties of his decision by certified mail.

Records of hearings held shall be kept on file in the Bureau of Personnel for a period of two (2) years from the date of original hearing thereon. Same shall be available for inspection by any of the parties to the complaint, or their representatives.

2. All uniformed members of the Providence Police Department shall be assigned a number which will be similar in size and design to that type presently used and worn by the Rhode Island State Police, and all uniformed members of the Providence Police Department shall wear and display said number sewn onto the left chest portion of his uniform. A roster of the names and photographs of all uniformed policemen and the number assigned to said policemen shall be maintained by the Bureau of Personnel and will be available to any civilian claiming to have a

complaint against any member of the Providence Police Department for purposes of identifying the officer, except undercover officers whose pictures may be excluded.

3. The Providence Police Department shall take all necessary action to implement the terms of this Consent Judgment within thirty (30) days from the entry hereof, with the exception of paragraph two (2) which shall be complied with within sixty (60) days. Copies of the complaint form and of all new regulations and general orders issued to implement the terms of this Consent Judgment shall be filed with the court within ten (10) days after issuance or adoption.

4. This being a Consent Judgment, the Court makes no findings of fact on the evidence introduced at the trial and makes no findings of fact on the issues raised in the litigation.

Done in open court this 27th day of March, 1973.

/s/ Raymond J. Pettine
Raymond J. Pettine
Chief Judge
United States District Court
District of Rhode Island

Assented to as to form and substance:

For the Defendants

City of Providence, by its
Deputy City Solicitor,

/s/ Ronald H. Glantz
Ronald H. Glantz

Judgment

/s/ JOHN P. BOURCIER
John P. Bourcier
One Thousand Smith Street
Providence, Rhode Island

/s/ HARRY GOLDSTEIN
Harry Goldstein
934 Industrial Bank
Building
Providence, Rhode Island

/s/ GERALD J. MCCARTHY
Pres. F.O.P.

FOR THE PLAINTIFFS

/s/ ALTON W. WILEY
Alton W. Wiley
220 South Main Street
Providence, Rhode Island

/s/ DREW S. DAYS, III
10 Columbus Circle
New York, New York

/s/ JOHN M. RONEY
John M. Roney
56 Pine Street
Providence, Rhode Island

Consent Decree

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE MIDDLE DISTRICT OF GEORGIA

MACON DIVISION

FILE
FILED at 5:00 P.M.
SEP 20 1974

DOROTHY F. MOTEY
Deputy Clerk, U. S. District Court
Middle District of Georgia

Civil Action No. 2893

JAMES CALVIN RIDGEWAY, et al.,

Plaintiffs,

vs.

RONNIE THOMPSON, et al.,

Defendants.

Plaintiffs brought this action under 42 U.S.C. §§ 1981, 1983, 1985, 1986 and 1988 against the Mayor, Chief of Police, Assistant Chief of Police, Chief of Detectives and Chairman of the Police Committee of City Counsel of the City of Macon, as well as nine (9) police officers for the City of Macon. The Plaintiffs seek injunctive and declaratory relief as appears more fully in the Complaint and Prayer for Relief in this action. The Defendants duly answered and denied the material allegations of the Complaint.

The Plaintiffs and the Defendants are desirous of resolving this matter without the time and expense of further litigation and the parties have consented to the entry of this Decree. This Decree does not constitute a finding or an admission of any unlawful or discriminatory conduct by any of the Defendants acting either in their official or their individual capacity. All Defendants expressly deny that they have acted in any way, under color of law or otherwise, to deprive the Plaintiffs of rights, privileges or immunities secured by the United States Constitution; by 42 U.S.C. §§ 1981, 1983, 1985, 1986 or 1988; or by any other state or federal law, regulation or order.

The Court has carefully examined the provisions of this Decree, including Exhibit A attached thereto, and it appears to the Court that this is a fair and reasonable resolution and in the best interest of all those who will be affected by it. Given the definition of classes set forth in the Complaint and the fact that the members of the alleged classes are not identifiable through reasonable effort, notice to the alleged classes by publication in the newspaper of widest circulation in this area is the only practical means of notice and is a means of notice reasonably calculated to appraise members of the alleged classes of the proposed settlement of this case.

Therefore it is

ORDERED, (1) That conditioned upon notice being made to the classes alleged in the Complaint and the failure of a substantial number of the members of the alleged classes to request exclusion from the classes and the failure of members of the alleged classes to raise substantial objections to these settlement and compromise provisions within the thirty (30) day period of time following the

initial publication of notice, the instant action is entirely resolved as to all Defendants herein, acting both in their official and their individual capacities, with prejudice to the claims of all named Plaintiffs and the classes alleged in the Complaint. The agreed costs of $350.00 will be paid by Defendants. It is further

ORDERED, (2) That the Defendants adopt and institute the procedure for processing citizen complaints of alleged police officer misconduct which is appended to this Decree as Exhibit A and which, the parties agree substantially complies with the relief requested by the Plaintiffs in this lawsuit. This procedure shall be fully implemented within six (6) months from the date of the entry of this Decree. It is further

ORDERED, (3) That the Defendants cause to be published in the Macon Telegraph once a week for a period of three (3) consecutive weeks, the notice appended to this Decree as Exhibit B. The publication of the notice shall commence within the ten (10) day period following the date of this Decree and a certification of compliance shall be filed with the Court by Defendants. Defendants shall pay the cost of providing notice shall pay the cost of providing notice in this manner. It is further

ORDERED, (4) That if a substantial number of alleged class members request exclusion from the classes or if substantial objections are raised to the provisions of the settlement within the thirty (30) day period of time following the initial publication of notice, a hearing will be scheduled and held to determine what disposition should be taken in this cause. It is further

ORDERED, (5) That during the period of notice provided in this Decree formal parties or their counsel shall not

Consent Decree

engage in unapproved direct or indirect written and oral communications with alleged, actual or potential class members who are not formal parties.

Dated this 20th day of September, 1974.

/s/ WILBUR D. OWENS
Wilbur D. Owens
United States District Judge

Stipulation of Consent

The undersigned hereby consent to the entry of a Decree in the form attached hereto on behalf of the parties they represent in this action.

RANDALL AND TURNER

By: /s/ WILLIAM C. RANDALL
William C. Randall
Attorney for Plaintiffs

Date: Sept. 20, 1974

LAWTON MILLER, SR.
/s/ LAWTON MILLER, SR.

Date: Sept. 20, 1974

THOMPSON, OGLETREE AND DEAKINS

By: /s/ HOMER L. DEAKINS, JR.
Homer L. Deakins, Jr.

Date: Sept. 19, 1974

By: /s/ H. LANE DENNARD, JR.
H. Lane Dennard, Jr.
Attorneys for Defendants

Date: Sept. 19, 1974

Exhibit A

**(Citizen Complaint Procedure
City of Macon Police Department
Macon, Georgia)**

1. Policy—It is the policy of the City of Macon and the Police Department of the City of Macon to enforce the Laws of the State of Georgia and Laws and Ordinances of the City of Macon in a manner consistent with the Constitutions of the United States and the State of Georgia. The Police Officers and other officers and employees of the City of Macon and the Macon Police Department must conduct themselves accordingly. These laws shall be enforced in a nondiscriminatory manner without a showing or implication in language or conduct of favoritism or antagonism toward any racial, ethnic or other minority group. Toward this end, the City of Macon and the Police Department for the City of Macon hereby adopt the following procedures whereby citizens and others who believe that they have been mistreated by the Police Department of the City of Macon may present their grievances to appropriate personnel for resolution.

2. Written Complaints—Whenever an individual who has been involved in an incident with Police Officer(s) of the City of Macon believes that he or she has been the object of police misconduct, such individual may file a written complaint with the Chief of Police of the City of Macon (Appendix A). This complaint shall include the name of the allegedly aggrieved citizen, the name(s) of the Police Officer(s) involved and the time, place and the circumstances involved in the incident. This complaint shall also include an explanation of the conduct that is deemed to be wrongful.

Exhibit A

Forms for citizen's complaints will be made readily available at Police Headquarters and other public sites. These written complaint forms may be submitted in person or mailed to the office of the Chief of Police of the Macon Police Department.

3. Investigation by Detective Bureau—If the facts of the case so indicate, the Chief of Police or his designated representative shall assign the case to the Detective Bureau for investigation. This assignment will normally be made as soon as possible within the seven (7) days following receipt of the complaint.

A report will normally be submitted by the Detective Bureau in the usual form and format for investigative reports. This report should be submitted to the Chief of Police within thirty (30) days from the date the case is referred to the Detective Bureau by the Chief of Police. This investigative report will include a statement from the complainant, statement(s) from the Police Officer(s) involved, statements from knowledgable witnesses and other materials and data deemed relevant.

4. Initial Conference With Chief of Police or Designated Representative—The initial step in attempting to resolve the complaint is a conference with the Chief of Police, Assistant Chief of Police or other designated officer at least of the rank of Captain. As soon as possible after a citizen's complaint is received, the office of the Chief of Police will contact the complainant and schedule this conference. This conference will normally take place within seven (7) days following the receipt of the citizen's complaint. However, if the case has been submitted to the Detective Bureau for investigation, this conference may,

Exhibit A

in the discretion of the Chief of Police or his designated representative, be delayed until such time as the report from the Detective Bureau has been submitted. The Chief of Police or his designated representative may, if appropriate, arrange a meeting between the complainant and the accused officer (and other interested parties, including complainant's counsel), and attempt to effect an informal reconciliation.

Within two (2) days following the conference with the Chief of Police, the complainant will be advised of what action, if any, will be taken in the case. The complainant will also be advised at this time that he or she may present their case to the Police Committee of the City Council if they are unsatisfied with the disposition of the case taken by the Chief of Police or his designated representative.

5. Hearing Before the Police Committee of City Council—If so requested by a complainant, a hearing will be conducted by the Police Committee of City Council under the normal procedures for City Council committee hearings. The complainant may be represented by an attorney or other interested person at this hearing but such representation is not required. The accused officer and the investigating officer from the Detective Bureau shall be present at this hearing and may be questioned by the committee members, the complainant or by other persons appearing in the complainant's behalf. The complainant, the accused Police Officer and representatives from the Police Department shall have the right to call and examine witnesses, to introduce exhibits and to cross examine opposing witnesses on matters relevant to the issues.

Exhibit A

The hearing shall normally be conducted within thirty (30) days from the date of the request by the complainant, unless a continuance is requested by the complainant. A written record of the hearing will be prepared which will, at a minimum, set out a summary of all testimony and other evidence presented in the case.

The Police Committee of City Council may approve the conclusions and recommendations of the Chief of Police or his designated representative, or it may adopt conclusions and recommendations of its own. The Police Committee may also request further investigation by the Detective Bureau. The final action of the Committee will be recorded in writing and will include a full explanation of the reasons for the decision.

Promptly after the Police Committee has reached its decision, the results will be forwarded to the Chief of Police. Thereafter, the Chief of Police shall promptly advise the complainant, in writing, of the decision reached by the Police Committee and what actions will be taken by the Police Department based on this decision. If a Police Officer is reprimanded or disciplined, a record of such action will be included in his or her personnel file.

6. Verbal Complaints—Individuals who present oral complaints by telephone or in person to Police Headquarters or to individual Police Officers will be requested to fill out a written citizen's complaint form. These individuals will be advised of the correct procedures to be followed under this citizen's complaint procedure. Upon request, a copy of the citizen's complaint form will be mailed to the complainant at the address furnished. All verbal complaints (along with written complaints) will be recorded on a central register as indicated in this policy.

Exhibit A

7. Recordation of Complaints in Central Register—Promptly after the receipt of a complaint, the office of the Chief of Police shall record the following information in a central register which will be maintained at Police Headquarters: (a) the full name of the complainant; (b) the manner in which the complaint was received (i.e., written complaint, oral complaint, personal appearance or letter); (c) date of receipt of complaint; (d) name of individual receiving original complaint; (e) time and place of alleged incident giving rise to complaint and (f) Police Officers accused and unit designation. The following items will be completed on the central register at the appropriate time: (a) date of initial conference; (b) date assigned to Detective Bureau for investigation; (c) whether a hearing before the Police Committee was requested, and (d) disposition of the case.

8. Availability of Citizen Complaint Forms and Dissemination of Information Concerning Citizen Complaint Procedures—The Police Department shall provide all members of the Macon Police Department with copies of this complaint procedure. In order to assure that all officers are knowledgeable concerning this policy and its implementation, training sessions will be conducted on this information. The Community Relations Section of the Macon Police Department shall be responsible for disseminating information concerning the citizen complaint procedure to all segments of the public. The citizen complaint forms themselves will be readily available at Police Department Headquarters. To aid in identifying accused Police Officers, all uniformed members of the Macon Police Department will be required to wear nameplates as a part of their official uniform.

Exhibit A

9. Definition of Police Misconduct—Police misconduct, as this term is used in this citizen complaint procedure will be deemed to mean conduct and/or speech of members of the Police Department for the City of Macon, acting in their official capacity in their interactions with citizens and other persons in the City of Macon, which violates the constitutional rights of such individuals or which violates federal or state law, City ordinances or the Rules and Regulations of the Macon Police Department. Police misconduct is further defined to include any conduct on the part of a Police Officer in the line of duty which discriminates against any person(s) or organization(s) on the basis of race, color, religion, sex or national origin.

10. Composition of Police Committee—The Police Committee referred to in this procedure shall be composed of the five (5) regular members of the Police Committee of City Council. The Chairman of the regular Police Committee of City Council shall also be Chairman of this Police Committee. All action taken by this committee shall be by majority vote.

Appendix "A"

(Citizen Complaint Form
City of Macon Police Department
Macon, Georgia)

1. *Person making complaint:*

   (a) full name .....

   (b) address .....

   Street Address

   .....

   City State

   (c) telephone number .....

2. I feel that I have been treated wrongfully by Police Officers of the City of Macon for the following reasons (include the time, place and circumstances of the incident):

   .....

   .....

   .....

   .....

3. The following Police Officers were involved in this incident (include name, rank and badge number, if these are known):

   (a) ....
   Name Rank Badge Number

   (b) ....
   Name Rank Badge Number

   (e) ....
   Name Rank Badge Number

Appendix "A"

4. The following persons were witnesses to the above incident or otherwise have knowledge of the facts surrounding this incident (include name and address):

   (a) .....
   Name

   .....
   Address

   (b) .....
   Name

   .....
   Address

   (c) .....
   Name

   .....
   Address

   .....
   Signature of person making complaint

   Date: ....
   Month Day Year

* Instructions for Filing This Complaint
This complaint may be filed in person with the office of the Chief of Police or Assistant Chief of Police at City Hall or mailed to the following address: Chief of Police, City of Macon Police Department, Macon, Georgia.

Received: ....
Month Day Year

By: ....
Name Position

Exhibit B

(Notice of Proposed Compromise and Settlement of Class Action)

IN THE

UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF GEORGIA

MACON DIVISION

Civil Action No. 2893

JAMES CALVIN RIDGEWAY, et al.,

Plaintiffs,

vs.

RONNIE THOMPSON, et al.,

Defendants.

To: *All black persons who reside in Macon, Bibb County, Georgia, and all white persons in the City of Macon, Bibb County and Metropolitan Macon, Georgia, who choose to associate and who do in fact associate with blacks on a social basis.*

NOTICE IS HEREBY GIVEN THAT:

On August 22, 1973, a civil action was filed in the United States District Court for the Middle District of Georgia, Macon Division, as a class action by James Calvin Ridgeway, Wilbert Brooks, Eleanor Sue Pinkston, Cecil Spradley, Jr., Della Smith, Edward Grant, Jr., and Houston Johnson, on behalf of themselves and all black persons in the City of Macon, Georgia, and Ricky Jans and Rozlyn

Exhibit B

Adams on behalf of themselves and those white persons who choose to associate and who do associate with blacks on a social basis in the City of Macon and in the Metropolitan area of Macon, Georgia. The Defendants in this action are Ronnie Thompson, Mayor of the City of Macon, Georgia; J. F. Flynt, Chief of Macon, Georgia Police Department; J. E. Brooks, Assistant Chief of the Macon, Georgia Police Department; W. H. Bargeron, Chief of Detectives, Macon, Georgia Police Department; Dan Tidwell, Chairman of the Police Committee, Macon, Georgia City Council; Officer M. R. Jones, Macon, Georgia Police Department; Officer D. P. Woods, Macon, Georgia Police Department; Officer R. C. Page, Macon, Georgia Police Department; Officer D. W. Worsham, Macon, Georgia Police Department; Officer D. M. Johns, Macon, Georgia Police Department; Officer Issac Stephens, Macon, Georgia Police Department; Officer Walter Duke, Macon, Georgia Police Department; Officer David Matthews, Macon, Georgia Police Department; and Officer Neal Hartley, Macon, Georgia Police Department. All Defendants are sued both individually and in their official capacities, and the Defendant police officers are also sued as representatives of a class of Defendants.

The named Plaintiffs and the classes they allegedly represent are seeking relief under 42 U.S.C. §§ 1981, 1983, 1985, 1986 and 1988, as well as the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States.

The named Plaintiffs and the classes they allegedly represent seek relief from alleged racially discriminatory conduct, practices and policies of the Defendants regarding the official activities of police officers in their interactions with citizens and others in the City of Macon. Specifically,

Exhibit B

Plaintiffs seek a modification of the procedure utilized by the City of Macon and the Police Department for the City of Macon to process citizen complaints of alleged police officer misconduct and a declaration of their rights under applicable laws.

The parties to this action have entered into a Stipulation of Consent and have agreed upon the terms of a Consent Decree as a compromise and settlement of all claims made by the named Plaintiffs and the classes they allegedly represent. The Consent Decree provides that the City of Macon and Police Department for the City of Macon will adopt a procedure for processing citizen complaints of alleged police officer misconduct which, the parties agree, substantially complies with the relief requested by the Plaintiffs.

Your rights may be affected in this action and, therefore:

(a) The Court will exclude you from the classes allegedly represented by the Plaintiffs if you request exclusion in writing by addressing the Clerk of the United States District Court, Middle District of Georgia, Macon Division, Macon, Georgia 31202.

(b) If you do not request exclusion from the classes pursuant to paragraph (a) above, you will be included in such classes and any judgment, whether favorable or not, including any judgment approving settlement of this action, will be binding upon you.

(c) If you do not request exclusion from the classes but prefer, in connection with your individual claim, to be represented by your own attorney rather than by William C. Randall of Macon, Georgia, and Jack Greenberg of New York City, attorneys for the named Plaintiffs herein, you

Exhibit B

may enter an appearance through your own attorney in writing by addressing the Clerk of the United States District Court, Middle District of Georgia, Macon, Division, Macon, Georgia 31202.

(d) If you do not request exclusion from the classes, then you may file objections to the Consent Decree agreed upon by all parties to this action in compromise and settlement of this action by submitting said objections to the Clerk of the United States District Court, Middle District of Georgia, Macon Division, Macon, Georgia 31202.

The above requests of exclusion, entries of appearance and objections to the settlement agreement may be made within the thirty (30) day period of time following the initial publication of this notice.

If you have any questions concerning this notice, you may write or call the Office of the Clerk of the United States District Court for the Middle District of Georgia, Macon Division, Macon, Georgia 31202.

Dated this 20th day of September, 1974.

/s/ WILBUR D. OWENS
Wilbur D. Owens
United States District Judge

Motion for Leave to Strike Class Action Allegations and to Dismiss Actions

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

Civil Action No. 72-1278-Y

CECIL BOYD, et al.,

Plaintiffs,

vs.

WINFIELD M. KELLY, JR., et al.,

Defendants.

The plaintiffs, Cecil Boyd, et al. and the defendants, Winfield M. Kelly, Jr., et al., hereby move the Court to strike the class action allegations of the complaint herein and thereafter to discontinue and dismiss this action with prejudice. As grounds for this motion, the parties state as follows:

1. That as of December 2, 1974, Winfield M. Kelly, Jr. replaced William W. Gullett as County Executive of Prince George's County, Maryland.

2. That more than sixty (60) days ago on February 19, 1975, Winfield M. Kelly, Jr., County Executive for Prince George's County, Maryland, voluntarily implemented certain policies and procedures with regard to the receipt, investigation and resolution of citizen complaints about the conduct of police officers of Prince George's County.

Exhibit B

3. That said policies and procedures were implemented by Executive Order No. 44-1975 issued by the County Executive on February 19, 1975, which order is attached hereto as Exhibit A.

4. That the plaintiffs, upon learning that such policies and procedures had been implemented, reviewed same, and found them to resolve the matters in dispute in this action.

5. That said County Executive, by affidavit attached hereto as Exhibit B, has expressed his commitment to continue such policies and procedures in effect in the future.

/s/ JOSEPH S. CASULA by MOC
Joseph S. Casula, *County Attorney*

/s/ ROBERT N. BOYER
Robert N. Boyer, *Associate County Attorney*
Courthouse
Upper Marlboro, Maryland 20870
627-3000, Ext. 224

/s/ JOSEPH A. DEPAUL
Joseph A. DePaul
7100 Baltimore Avenue
College Park, Maryland 20740
277-8451

Attorneys for Defendants

/s/ JOHN M. FERREN
John M. Ferren

/s/ DAVID S. TATEL
David S. Tatel

Exhibit B

/s/ ALLEN R. SNYDER
Allen R. Snyder

/s/ TERRY MICHAEL BANKS
Terry Michael Banks
HOGAN & HARTSON
815 Connecticut Avenue
Washington, D. C. 20006

/s/ DREW S. DAYS III
Drew S. Days III
10 Columbus Circle
New York, New York 10019

/s/ JOSEPH A. FINLAYSON
Joseph A. Finlayson
3847 Bryant Avenue
Suite 114
Hillcrest Heights, Maryland 20031

/s/ HAROLD BUCHMAN
Harold Buchman
5400 Tower Building
Baltimore & Gilford Avenue
Baltimore, Maryland 21202
Attorneys for Plaintiffs

Dated: April 29, 1975

Exhibit B

(Affidavit)

STATE OF MARYLAND,
COUNTY OF PRINCE GEORGE'S, *ss.:*

Before me, the undersigned Notary Public, personally came and appeared:

Winfield M. Kelly, Jr., who, being duly sworn, deposes and says:

(1) That I am County Executive of Prince George's County, Maryland, having been lawfully elected to the office by the people of Prince George's County, Maryland. I submit this affidavit in support of the motion to strike the class action allegations and to dismiss this action.

(2) That on February 19, 1975, I issued Executive Order No. 44-1975 by which certain policies and procedures with regard to the receipt, investigation and resolution of citizen complaints about the conduct of police officers of Prince George's County were placed into effect.

(3) That as County Executive of Prince George's County, Maryland, it is my intention to maintain and to improve the policies and procedures set forth in the aforesaid Executive Order.

/s/ WINFIELD M. KELLY, JR.
Winfield M. Kelly, Jr.
County Executive, Prince George's
County, Maryland

SWORN TO AND SUBSCRIBED before me, the undersigned, this 29th day of April, 1975.

/s/ BONITA M. BRADLEY
Notary Public

My commission expires:
July 1, 1978

Order

In The

UNITED STATES DISTRICT COURT

For the District of Maryland

Civil Action No. 72-1278-Y

Cecil Boyd, et al.,

Plaintiffs,

—v.—

Winfield M. Kelly, Jr., et al.,

Defendants.

Upon the Joint Motion of Plaintiffs and Defendants to Strike Class Action Allegations and For Leave to Dismiss This Action, dated April 29, 1975, and upon the Affidavit of defendant Kelly, dated April 29, 1975, it is this ..... day of ....., 1975,

Ordered that the class action allegations contained in plaintiffs' amended complaint are hereby stricken, and it is further,

Ordered that this action be dismissed with prejudice, and it is further,

Ordered that the court costs as assessed by the Clerk shall be paid one-half by the plaintiffs and one-half by the defendants.

.....

District Judge

Exhibit A

(Executive Order No. 44-1975)

Prince George's County

[Emblem]

Courthouse,
Upper Marlboro, Maryland 20870
(301) 627-3000

Winfield M. Kelly, Jr.
County Executive

Whereas, it is the policy of the government of Prince George's County and the Prince George's County Police Department, in particular, to enforce the Laws of the State of Maryland and Laws and Ordinances of Prince George's County in a manner consistent with the Constitution of the United States and the State of Maryland; and,

Whereas, police officers and other officers and employees of the County and Prince George's County Police Department must endeavor at all times to conduct themselves accordingly; and,

Whereas, such laws must be enforced in a non-discriminatory manner without a showing or implication in language or conduct of favoritism or antagonism toward any racial, ethnic or other minority group; and,

Whereas, it is in the best interests of all citizens and employees of Prince George's County for citizen complaints against County police officers to be resolved expeditiously and in a just manner,

Now, Therefore, by virtue of the authority vested in the County Executive by Article V, Sections 501, 502 and 503 of

Exhibit A

the Charter for Prince George's County, Maryland, it is, this 19 day of February, 1975;

ORDERED that the following procedures and policies shall be implemented by the Prince George's County Police Department and the Human Relations Commission:

I. CITIZEN COMPLAINTS

A. Whenever an individual believes that he or she has been the object of police misconduct, such individual may file a written complaint with the Chief of Police of Prince George's County on a form consistent with that contained in Attachment A.

1. The complainant should include on this form, to the extent that he or she is able, the name of the allegedly aggrieved citizen, the name(s) and badge number(s) of the police officer(s) allegedly involved, the time, place and circumstances involved in the incident. This complaint shall also include an explanation of the conduct that is deemed to be wrongful. If the complaint against one or more police officers alleges that brutality was used by such officer(s) in the execution of their duties, then the complaint shall be sworn to before an official authorized to administer oaths in accordance with the requirements of Article 27, Section 728(B)(4) of the Annotated Code of Maryland.

2. Sufficient supplies of citizen complaint forms shall be readily available at every Prince George's County Police station, every public library branch within the County, at a designated office at the County Courthouse, and at every office of the Prince George's County Human Relations Commission (hereinafter "HRC"). These written complaint

Exhibit A

forms may be submitted in person or sent by mail to any office of the Prince George's County Police Department or to any office of the HRC.

B. Individuals who present oral complaints by telephone or in person to police headquarters, to individual police officers or to HFC officials shall be instructed to fill out a written citizen's complaint form. The police officers or HRC officials shall advise said individuals of the correct procedures to be followed under this citizen's complaint procedure. Upon request, a copy of the citizen's complaint form will be mailed to the complainant at the address furnished.

C. The Police Department shall place posters in all police stations, libraries, and the offices of the HRC which explain the procedure for filing a complaint.

D. An explanation of the complaint procedure shall be made to all officers of the Prince George's County Police Department in a General Order to be included in the General Order Manual of the Police Department, and shall be included in the training program for all new officers.

II. INVESTIGATION OF COMPLAINTS

A. The Internal Affairs Section of the Police Department, upon receipt of any citizen complaint form which alleges that sworn personnel of the Police Department took any action which may be investigated by the HRC, shall immediately transmit a copy of such complaint form to the HRC. Such complaints include those which allege police harassment (including unlawful arrests and other discriminatory and unlawful acts), excessive or unnecessary use

of force and the use of language which would demean the inherent dignity of any person (including the use of abusive language or racial epithets).

1. The Internal Affairs Section of the Police Department shall commence an investigation of all such complaints within a reasonable amount of time, ordinarily within thirty (30) days from the date of receipt of such complaint in the section. The purpose of such investigation shall be to evaluate the merits of the complaint in an objective manner.

B. Upon the completion of its complaint investigation, the Internal Affairs Section shall immediately forward to the Chief of Police a full report of its investigation including findings of fact and recommendations, if any, either for exoneration or disciplinary action to be taken against the officer(s) involved.

C. Within ten (10) days after the receipt of the report by the Internal Affairs Section, the Chief of Police shall decide whether to take disciplinary action against the officer(s) who is (are) the subject(s) of a complaint.

1. In the event that disciplinary action is proposed, the provisions of Article 27, Sections 727-734 of the Annotated Code of Maryland and the provisions of the Charter and the Code of Ordinances and Resolutions of Prince George's County, Maryland, (to the extent that they do not conflict with state law) shall apply. In any case where the Chief of Police, either pursuant to a request of the Human Relations Commission under Section II(D)(2) below or at the request of an officer who is the subject of a complaint, convenes a hearing pursuant to Article 27, Sections 727-734 of the Code, the Human Relations Commission shall be

advised of the time and place that the hearing will be held. Members of the HRC's staff may attend such hearings and shall be encouraged to do so. Within ten (10) days after such hearing is concluded, the HRC shall advise the Chief of Police and all parties to the investigating committee hearing (1) whether there is available to the HRC additional evidence (in the form of one or more witnesses who are willing to testify or in the form of documents or records obtained as a result of investigation by the HRC) which was not introduced at said hearing; (2) whether in the opinion of a majority of the members of the HRC the introduction of any of such evidence would substantially affect the results of said hearing. The recommendations of the investigating committee shall be forwarded to the Chief of Police, to the complainant, and to the HRC no sooner than ten (10) and no later than twenty (20) days after the conclusion of such hearing except to the extent that such time period is altered by other provisions of this Executive Order. Included with such notification, in the event that both of the above conditions are met, shall be a request by the HRC to the Chief of Police to reconvene the hearing so that the Internal Affairs Section may properly present such evidence to the investigating committee. In the event that the Chief of Police refuses to reconvene such hearing, the HRC shall request the County Executive to instruct the Chief of Police to do so. If the County Executive refuses to do so, the HRC shall convene a hearing for the limited purpose of receiving such evidence which was the basis of the request to the Chief of Police to reconvene the investigating committee hearing. Such hearing shall be held and the transcript thereof shall be forwarded to the Police Department within twenty (20) days after the date that the County

Exhibit A

Executive refuses to instruct the Chief of Police to reconvene the investigating committee hearing. Such supplementary hearing before the HRC shall be conducted in accordance with Section D(3) below. In the event that the investigating committee hearing is reconvened or in the event that a separate supplemental hearing before the HRC is held, the investigating committee shall make its recommendations after such reconvened hearing has been concluded or after the transcript and exhibits of the HRC supplementary hearing have been received. The other time limits referred to above shall be adjusted accordingly. Within an additional ten (10) days thereafter, the Chief of Police shall issue detailed findings of fact and conclusions including a determination whether appropriate disciplinary action shall be taken against any officer who is the subject of a complaint. Detailed findings of fact and conclusions of the Chief of Police shall be forwarded promptly to the complainant and to the Human Relations Commission. These findings and conclusions, together with the findings of the investigating committee, shall be available for inspection by any member of the public during regular business hours at the offices of the Human Relations Commission.

2. In the event that final disciplinary action is taken without a hearing having been held by the investigating committee or in the event that no disciplinary action is taken against an officer who is the subject of a citizen complaint described in Paragraph II(A) above, then the Chief of Police shall so notify the HRC and the complainant in writing within ten (10) days of his making the decision. Included with such notification shall be specific findings of fact and conclusions upon which the decision is based.

Exhibit A

D. In cases where no hearing has been held by the Police Department, whether the officer who is the subject of a complaint is exonerated or disciplined, the HRC, upon the receipt of the findings and conclusions of the Chief of Police, shall review the report of the investigation including statements of all persons interviewed as prepared by the Internal Affairs Section of the Police Department. The Human Relations Commission shall not refuse to review or investigate any complaint which it receives under this procedure solely because the complainant or any other witness is unavailable. Once such review has been completed, the HRC may conduct such further investigation as it may consider necessary to complete its review of the complaint. Such review and any further investigation shall be completed within thirty (30) days from the date that the findings were received. Within the same period of time the Human Relations Commission shall determine whether or not it shall concur with the findings of the Police Department.

1. If a majority of the Human Relations Commission concurs with the Police Department's findings, conclusions, and proposed disciplinary action, then the Human Relations Commission shall adopt the findings, conclusions and recommended disciplinary action of the Police Department as its own.

2. In the event that a majority of the Human Relations Commission, after review and investigation, does not concur with the findings, conclusions, or recommendations of the Police Department, it shall request the County Executive to instruct the Chief of Police to convene an investigating committee hearing pursuant to Paragraph II(C)(1) if such hearing has not already been held. The County

Executive shall respond to the request of the Human Relations Commission within ten (10) days.

3. In the event that the County Executive refuses to convene a hearing pursuant to Paragraph II(D)(2) above, the Human Relations Commission shall convene its own hearing to further consider the complaint.

a. Each such hearing shall be transcribed.

b. The complainant and the officer(s) under investigation shall have the right to counsel, the right to cross-examine witnesses, and the right to present evidence.

c. At the conclusion of such hearing, the HRC shall issue detailed findings of fact and conclusions. HRC's findings, conclusions, and recommendations shall be mailed to the complainant and to the Police Department within two (2) days of their completion and shall be available for inspection by any member of the public during regular business hours. Any additional investigation shall be completed and the hearing by the HRC shall be held within thirty (30) days from the date of the decision by the County Executive referred to in Section II (D) (3) unless the HRC, for good cause shown, grants a postponement of such hearing; provided, however, that in no event shall such hearing by the HRC be held later than sixty (60) days after the date of said decision by the County Executive.

E. In the event the Police Department fails to initiate or complete the proceedings described in Paragraph II(A), (B), or (C) above within one hundred and eighty (180)

days after the filing of the complaint, HRC shall proceed pursuant to Paragraph II(D) above to conduct a preliminary investigation of the allegations contained in the complaint. Within thirty (30) days thereafter HRC shall either notify the complainant in writing that his or her complaint is frivolous, giving reasons therefor, or invoke its authority under Paragraphs II(D)(2) or II(D)(3) if a majority of the HFC concludes, after the initial investigation, that the complaint is not frivolous.

III. Identification of Officers

A. To aid citizens in identifying officers, all officers shall wear a lacquer protected brass nameplate with black letters. Such nameplate shall be worn centered over the right breast pocket with the bottom line ½ inch above the top seam of the right breast pocket. When the winter jacket is worn, the nameplate shall be worn on the right breast pocket flap, centered ½ inch below the top seam. The nameplate shall be worn and maintained at all times so that it is legible from a distance of five (5) feet.

B. All officers who prepare incident reports or arrest reports shall be required to identify every officer of the Department who was present during the incident. The Department's report forms shall be revised to include a section for such listing. The Department's Police Manual shall be revised to include this requirement.

IV. Training Programs

A. The Prince George's County Police Department shall include in its training program for all new officers courses concerning police-community and race relations.

Exhibit A

B. The Department shall require each of its officers to attend, at least once every three (3) years, a course or courses of instruction sufficient in content, duration, and scope to provide effective continuing education in police-community and race relations.

/s/ WINFIELD M. KELLY, JR.
Winfield M. Kelly, Jr.
County Executive

JUL 23 1975
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-942

FRANK L. RIZZO, *et al.*,
vs.
GERALD G. GOODE, *et al.*,
Petitioners,
Respondents.

HON. JAMES H. J. TATE, *et al.*,
vs.
COUNCIL OF ORGANIZATIONS ON PHILADELPHIA POLICE ACCOUNTABILITY AND RESPONSIBILITY, *et al.*,
Petitioners,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

Brief of the American Civil Liberties Union, the Mexican American Legal Defense and Educational Fund, and the Northern California Police Practices Project, as *Amici Curiae*

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IN THE

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COUNCIL OF ORGANIZATIONS
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BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, THE MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND, AND THE NORTHERN CALIFORNIA POLICE PRACTICES PROJECT, AS AMICI CURIAE

INTEREST OF THE AMICI CURIAE

The American Civil Liberties Union (ACLU) is a nation-wide non-partisan, non-profit membership organization dedicated to securing the constitutional rights of all persons. A principal concern of the ACLU is the pervasive impact of police lawlessness upon the constitutionally protected liberties of a free society. For more than fifty years, the ACLU has engaged in litigation and education which seeks to insure that all agents and agencies of government are governed by the rule of law, and that their conduct conforms to the law. The ACLU's interest in the present cases is based upon the belief that arbitrary exercises of police power and unfettered police discretion cannot be reconciled with constitutional government.

The Mexican American Legal Defense and Educational Fund (MALDEF) is a national, non-partisan, non-profit organization established in 1968 to secure and advance the civil rights of Mexican Americans through litigation and education. Since its inception, MALDEF has actively presented legal challenges to many indignities faced by Mexican Americans and has been particularly concerned with the police treatment of members of racial and cultural minorities. MALDEF is interested in these cases for two related reasons. First, its experience has demonstrated the deep and pernicious effects of police illegality upon the lives and spirits of minority people. Second, it is convinced that police treatment of individuals must be effectively regulated by public officials acting responsibly under the law,

and that the limits of police power cannot safely be defined by the impulses of policemen in the field even though political majorities may condone abuses and excesses that fall most harshly on unpopular, politically powerless groups.

The Northern California Police Practices Project is a non-partisan, non-profit organization established in the San Francisco Bay Area of California in 1973 with the objective of developing adequate public accountability of police agencies and police personnel. Its establishment reflected the practical experience of civil-rights litigating organizations that traditional judicial remedies for the security of individual rights against police misconduct are wholly insufficient when widespread and uncontrolled abuses are produced by failures of police organizations to police themselves. Accordingly, the Project's primary efforts have been directed toward the creation of adequate intradepartmental mechanisms for regulating police conduct that may trench on citizens' rights -- efforts that the Project pursues by a program of cooperation with police departments when that is possible, by litigation when it is not. The Project's interest in these cases arises because petitioners' position in this Court is potentially destructive of police accountability in two ways. First, it threatens to undermine the responsibility that some police departments do assume for controlling unconstitutional actions by their officers. Second, it leaves the legal process powerless to stimulate forms of police self-correction which offer the only efficacious safeguard against many varieties of misconduct by policemen.

SUMMARY OF ARGUMENT

1. After extended evidentiary hearings, the District Court found that constitutional violations of citizens' rights by Philadelphia policemen had occurred and would recur with intolerable frequency, and that the Philadelphia Police Department was doing nothing about them. The court thereupon ordered the mildest conceivable form of relief, requiring only that the Department maintain citizen-complaint procedures that would enable the Department -- not the court -- to supervise the Department's officers sufficiently to keep their conduct lawful. Petitioners' attack on this order necessarily and explicitly denies that police officials have any responsibility for controlling their subordinates' obedience to constitutional limitations. Such a position is unacceptable because a regime of uncontrolled police power is inconsistent with the rule of law and with the preservation of constitutional liberties under law.

2. Neither Due Process nor the Fourth Amendment countenances an unregulated exercise of police authority. Armed with the most violent and intrusive powers in civilian society and organized according to a paramilitary model that resists external controls, policemen must be governed effectively by their superiors if these constitutional guarantees are to be respected.

3. When a federal district court is confronted with a record showing frequent constitutional violations by policemen that are condoned and perpetuated by their department's failure to provide adequate

corrective procedures, the court can respond in one of three basic ways. The first is to abdicate its own responsibility for enforcing constitutional rights by permitting the department to do the same. The second is to assume some measure of direct control over the operations of the department -- a remedy which, while not beyond the power of the court in the most extreme situations, should ordinarily be avoided where lesser measures of relief will suffice. The third approach, adopted by the District Court here, is to insist that police supervisory personnel improve internal departmental controls and make them adequate. That is an altogether permissible and appropriate approach, and was well within the equitable remedial powers of the District Court in the present cases.

ARGUMENT

I. INTRODUCTION

The subject of this lawsuit is official lawlessness; the object of the lawsuit, to assure governmental accountability. At issue is the power of the federal judiciary to respond effectually to "a persistent pattern of police misconduct." 1/ The ultimate question -- of paramount importance because "if America is to meet the challenge of crime . . . [i]t must recognize that the government of a free society is obliged to act not only effectively but fairly" 2/ -- is whether the Constitution of the United States will tolerate un unregulated police.

Policemen combat crime; crime is a serious problem; and there therefore arise serious pressures and seductive blandishments to give policemen "untrammeled power to act unilaterally, unhampered by rules" 3/ and freed of the "standards and restraints" 4/

1/ Allee v. Medrano, 416 U.S. 802, 815 (1974).

2/ PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, REPORT: THE CHALLENGE OF CRIME IN A FREE SOCIETY 291 (G.P.O. 1967) [hereinafter cited as NATIONAL CRIME COMMISSION REPORT].

3/ Goss v. Lopez, 419 U.S. 565, 580 (1975).

4/ Louisiana v. United States, 380 U.S. 145, 153 (1965).

that the Constitution imposes upon all governmental action 5/ "so as to assure that . . . [such action] is being applied consistently and so as to avoid both the reality and the appearance of arbitrary denial" 6/ of individual rights. The siren song is not new; and we are confident that the Court will, as always heretofore, 7/ perceive its dissonance with the most rudimentary principles of civilization. "Civilization involves subjection of force to reason, and the agency of this subjection is law." Pound, The Future of Law, 47 YALE L. J. 1, 13 (1937).

As amici, we shall not burden the Court by repeating the parties' summaries of the evidence received by the District Court and evaluated by that court after "[g]iving the police the benefit of the doubt" at every point, 357 F. Supp. at 1298, and consistently according petitioners "the full benefit of the presumption that the police officers acted properly," id. at 1292.

5/ E.g., Goss v. Lopez, 419 U.S. 565 (1975); Wolff v. McDonnell, 418 U.S. 539 (1974); Camara v. Municipal Court, 387 U.S. 523 (1967); Schware v. Board of Bar Examiners, 353 U.S. 232 (1957); Slochower v. Board of Higher Education, 350 U.S. 551 (1956); Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123 (1951).

6/ Morton v. Ruiz, 415 U.S. 199, 231 (1974).

7/ See, e.g., United States v. United States District Court for the Eastern District of Michigan, 407 U.S. 297, 318-321 (1972); United States v. Di Re, 332 U.S. 581, 595 (1948); Chambers v. Florida, 309 U.S. 227, 240-241 (1940).

Suffice it to say that a unanimous Court of Appeals, making its own "review of the lengthy record," 506 F.2d at 547, approved the District Court's "voluminous findings of fact," id. at 545, with a proper awareness "of the weight which must be given to the findings of a trial judge which are dependent upon and interwoven with intensely local conditions and circumstances," id. at 547. 8/ The Court of Appeals accordingly affirmed the District Court's conclusions that, "under existing circumstances, violations of constitutional rights by [the Philadelphia] police do occur in an unacceptably high number of instances; [9/] that, in the absence of changes in procedures, such violations are likely to continue to occur," 357 F. Supp. at 1321; that these violations occur "with such frequency that 'they cannot be dismissed as rare isolated incidents; and that little or nothing

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8/ The Court of Appeals also properly noted that District Judge Fullam was familiar with other lawsuits challenging Philadelphia Police Department practices. 506 F.2d at 547 n. 6.

9/ "The evidence discloses that violations of legal and constitutional rights of citizens by the police are most widespread in the following areas of police activity:

"(1) Arrests 'for investigation'; (2) Treatment of citizens who question or criticize what the police are doing in a particular instance; (3) Charges of resisting arrest, when the arrest was unlawful in the first place; (4) Extreme overreaction to actual or reported assaults upon policemen." (357 F. Supp. at 1318.)

is done by the city authorities to punish such infractions, or to prevent their recurrence,'" 506 F.2d at 545. On the basis of these findings and conclusions, and because "revision of procedures for handling citizen complaints is a necessary first step in attempting to prevent future abuses," 357 F. Supp. at 1321, the District Court ordered moderate and minimal relief, eschewing more extreme remedies and requiring only that the Philadelphia Police Department maintain such citizen-complaint procedures as were necessary to enable it to police itself, thereby obviating the necessity for further judicial intervention into police management or routine police activities.

Although there can be "no contention that this decree would interfere with law enforcement by restraining the police from engaging in conduct that would be otherwise lawful," Allee v. Medrano, 416 U.S. 802, 814 (1974), petitioners assail its affirmance by the Court of Appeals as an "abrasive, unmanageable and unwise intrusion into police administration." 10/ That submission contains, in petitioners' words, a singular "irony," 11/ inasmuch as the only thing done by the District Court's decree is to place responsibility for controlling the Philadelphia Police Department precisely where the petitioners say it belongs -- in the hands of police administrators themselves. Far from "assuming control over a major aspect of

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10/ Brief for Petitioners, p. 44.

11/ Brief for Petitioners, p. 38.

the operations of the Philadelphia Police Department," 12/ the courts below have merely insisted that the Department control itself. 13/

12/ Brief for Petitioners, p. 17 (subtitle).

13/ The decisions below hardly make it "'a tort for the government to govern.'" (Brief for Petitioners, p. 35.) They hold rather that it is a remediable constitutional wrong for governing police officials to refuse to govern when the men under their command commit an unacceptably high number of constitutional violations for want of governance. Petitioners' position in this Court makes clear that the issue in this case is not how the Philadelphia Police Department should discipline its troops to observe the constitutional rights of citizens, but whether the Department is obligated at all to undertake to do so. Petitioners deny any such obligation (Brief for Petitioners, p. 39), as indeed they must in order to defend their practice of excluding the protection of constitutional rights from the regimen of internal police discipline. Their "procedures are geared to handle infractions of police rules and regulations, yet these rules and regulations are not framed to cover specific violations of the legal and constitutional rights of civilians." 357 F. Supp. at 1320; see also 506 F.2d at 545. In this setting, the question is surely not whether "the district courts can suspend the power and discretion of local administrators and assume . . . [the latters'] power" (Brief for Petitioners, p. 36), but whether the district courts can insist upon the responsible assumption of "power and discretion" by "local administrators."

Petitioners are therefore left to stand upon the ultimate proposition that "[t]he police have absolutely no duty to provide a quasi-judicial tribunal to conduct adversary hearings for violations of constitutional rights" by policemen. 14/ When stripped of its hyperbole, 15/ this

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14/ Brief for Petitioners, p. 39.

15/ The procedures ordered by the District Court for processing citizens' complaints are no more "quasi-judicial" or "adversary" than those which this Court has required of such diverse functionaries as prison administrators, local school officials, and public-housing managers. Wolff v. McDonnell, 418 U.S. 539 (1974); Goss v. Lopez, 419 U.S. 565 (1975); Thorpe v. Housing Authority of the City of Durham, 393 U.S. 268 (1969). Throughout petitioners' brief there runs an undercurrent of objection to the detailed nature of the complaint procedures, to their form (as a departmental directive), and to some of their specific provisions. Even assuming that such objections are open under the two Questions Presented in the petition for certiorari and that they are cognizable within the proper scope of appellate review of the District Court's remedial discretion (see page 59 infra), they are both unfounded and unfair. In its substantive disposition of this case, the District Court merely ordered the petitioners "to submit to this Court for its approval a comprehensive plan for improving the handling of citizen complaints alleging police misconduct, in conformity with the views expressed in the Opinion of this Court . . . ." 357 F. Supp. at 1322. The "views" in question included the suggestion

proposition amounts to saying flatly that police departments have no obligation to supervise their officers to obey the Constitution -- that they may recklessly and unrestrainedly despatch thousands of men armed with super-ordinary powers and directed to take millions of actions that

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that certain very general "guidelines" be "carefully considered" by the petitioners in their "formulation" of complaint procedures -- guidelines that the District Court sketched in a paragraph. See 357 F. Supp. at 1321. The final form of the departmental "directive" incorporated in the District Court's decree was the product of the petitioners' subsequent drafting, with modifications by the court. It is markedly inappropriate, therefore, for petitioners to seize upon the specific character of the directive to portray this case as one in which the District Court undertook to write a detailed code of regulations for the Philadelphia Police Department. The court merely worked with the material that the petitioners submitted to it; and, if there is some way in which a highly detailed plan submitted to a court by a party can be made less detailed in the course of the court's review, we have never seen such a thing happen in school-desegregation litigation, employment-discrimination litigation, prisoners'-rights litigation, or any other sort of injunctive litigation in which we have been involved.

"can affect in some way someone's dignity, or self-respect, or sense of privacy, or constitutional rights," 16/ while leaving the constitutional discipline of those men and any correction of their constitutional infractions to be handled on an ad hoc basis by "the courts." 17/

Such a view of governmental responsibility -- or rather irresponsibility -- involves an extraordinary inversion of the American system of constitutional government under law. Petitioners complain that "the District Court attempted to place elsewhere [i.e., upon the command structure of the police department] the very duty which this Court has said rests with the courts [i.e., to assure that the police function within the Constitution]." Brief for Petitioners, p. 39. This is to read Marbury v. Madison, 1 Cranch 137 (1803), as though its proclamation of "the judiciary's fundamental right to review the unconstitutional actions of coordinate branches of government" (Brief for Petitioners, p. 21) meant that only the judiciary is responsible for enforcing the Constitution -- that executive officials are free to run their departments heedless of the Constitution and to leave the resulting mess to be cleaned up by the courts through whatever post hoc compensatory or restitutionary remedies judges may be able to enforce against the executive's subordinates. That is obviously not what Marbury holds or implies.

16/ NATIONAL CRIME COMMISSION REPORT 91.

17/ Brief for Petitioners, p. 39.

To the contrary, Chief Justice Marshall's answers to the three distinct questions decided in Marbury make clear that the Constitution speaks directly and independently to both executive officers and the courts, obligating the former to manage their affairs consistently with fundamental law, and empowering the latter to enforce this obligation in cases where executive derelictions give rise to justiciable controversies. See, e.g., Scheuer v. Rhodes, 416 U.S. 232, 243-249 (1974). "Every state . . . executive . . . officer is solemnly committed by oath taken pursuant to Art. VI, cl. 3, 'to support this Constitution.' Chief Justice Taney, speaking for a unanimous Court in 1859, said that this requirement reflected the framers' 'anxiety to preserve it [the Constitution] in full force, in all its powers, and to guard against resistance to or evasion of its authority, on the part of a State . . . .'" Cooper v. Aaron, 358 U.S. 1, 18 (1958).

Police officials too are subject to that responsibility. 18/ When they are faithless to it, the extensive, drastic forces that our society has necessarily and properly entrusted to policemen degenerate into instruments of "naked and arbitrary power" 19/ that threaten the very fabric of democracy.

18/ "No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the Government, from the highest to the lowest, are creatures of the law, and are bound to obey it." United States v. Lee, 106 U.S. 196, 220 (1882).

19/ Yick Wo v. Hopkins, 118 U.S. 356, 366 (1886).

"Since a principal function of police is the safeguarding of democratic processes, if police fail to conform their conduct to the requirements of law, they subvert the democratic process and frustrate the achievement of a principal police function. It is for this reason that high priority must be given for ensuring that the police are made fully accountable to their police administrator and to the public for their actions." (AMERICAN BAR ASSOCIATION PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO THE URBAN POLICE FUNCTION, §5.1 (Approved Draft, 1973) [hereinafter cited as A.B.A. STANDARDS].)

It is for the same reason that adequate and effective police-administered self-corrective processes are "an absolute necessity" 20/ of democratic and constitutional

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20/ NATIONAL CRIME COMMISSION REPORT 103. See also A.B.A. STANDARDS §5.4; NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, REPORT 163 (G.P.O. 1968); NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS, REPORT: POLICE 469-494 (G.P.O. 1973) [hereinafter cited as CRIMINAL JUSTICE STANDARDS REPORT]; PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: THE POLICE 29 (G.P.O. 1967) [hereinafter cited as POLICE TASK FORCE REPORT].

government, and that judicial relief is available and appropriate when police "procedures for handling civilian complaints and for enforcement of police discipline related to civilian complaints is totally inadequate," 357 F. Supp. at 1318; see also 506 F.2d at 548, to restrain individual police officers from violating "the legal and constitutional rights of citizens . . . entirely too frequently," 357 F. Supp. at 1318.

Our submissions in this brief are, summarily (1) that the Constitution commands the maintenance of effective controls over police practices which may otherwise trench upon citizens' constitutional rights, and (2) that courts enforcing the Constitution are authorized to require a police department to maintain such controls where the department's failure to do so, despite persistent constitutional violations by its officers, is demonstrated. We first discuss the impermissibility of an uncontrolled police (Part II, infra), and then the propriety of the relief decreed below against that evil (Part III, infra).

II. THE PRACTICAL AND CONSTITUTIONAL CONCERNS AGAINST AN UNREGULATED POLICE

Although, as we shall shortly see, 21/ every agency of American government is constrained by the rule of law 22/ -- "the only supreme power in our system of government," United States v. Lee, 106 U.S. 196, 220 (1882) -- there are particularly intense practical and constitutional reasons why police agencies have "the responsibility . . . to employ procedures that conform to the law." Morton v. Ruiz, 415 U.S. 199, 232 (1974). The practical reasons seem self-evident but will bear a brief recapitulation:

First, "the authorization and the obligation to use force on the basis of no more than reasonable belief that the undertaken action is justified is the exclusive monopoly of the police. No other official in any branch of civil government has this right or this duty." E. BITTNER, THE FUNCTIONS OF THE POLICE IN MODERN SOCIETY 34 (DHEW Publication No. (HSM) 72-9103, reprinted 1972) [hereinafter cited as BITTNER]. Policemen have and must be given violent means to do their job: the means to arrest and search and seize, to strike and maim and kill. As Justice

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21/ Pages 31-32 infra.

22/ E.g., Papachristou v. City of Jacksonville, 405 U.S. 156, 171 (1972). See Marbury v. Madison, 1 Cranch 137, 163 (1803): "The government of the United States has been emphatically termed a government of laws, and not of men."

Jackson reminded us shortly after his return from Nuremberg, "One need only briefly to have dwelt and worked among a people possessed of many admirable qualities but deprived of . . . [the] rights [against uncontrolled exercises of such powers] to know that the human personality deteriorates and dignity and self-reliance disappear where homes, persons and possessions are subject at any hour to unheralded . . . [invasions] by the police." Brinegar v. United States, 338 U.S. 160, 180-181 (1949)(dissenting opinion). Even the most ordinary and least intrusive of police powers may involve a "'severe, though brief, intrusion upon cherished personal security,'" Cupp v. Murphy, 412 U.S. 291, 295 (1973), a "serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment . . . ." Terry v. Ohio, 392 U.S. 1, 17 (1968). See NATIONAL CRIME COMMISSION REPORT 91, quoted in text at note 16 supra.

Second, the range of police activities is exceedingly broad 23/ and therefore exceedingly difficult for any agency outside of the police themselves to encompass or control. 24/

23/ See, e.g., NATIONAL CRIME COMMISSION REPORT 91-99; POLICE TASK FORCE REPORT 13-16; A.B.A. STANDARDS 36-78; J. WILSON, VARIETIES OF POLICE BEHAVIOR (1968); Danzig, Toward the Creation of a Complementary, Decentralized System of Criminal Justice, 26 STAN. L. REV. 1 (1973).

24/ See, e.g., Goldstein, Administrative Problems in Controling [sic] the Exercise of Police Authority, 58 J. CRIM. L., CRIM. & POL. SCI. 160 (1967); Amsterdam, Perspectives on the Fourth Amendment, 58 MINN. L. REV. 349, 386-387 (1974).

Third, throughout this range, individual police officers are customarily "left to function on . . . [their] own," 25/ with no restraints or guides but their impulses, their "street smarts," and whatever policies they themselves may choose to make for their own governance. 26/ Professor Kenneth Culp Davis has said that

> "[t]he police are among the most important policy-makers of our entire society. . . . [T]hey make far more discretionary determinations in individual cases than any other class of administrators; I know of no close second." (K. DAVIS, DISCRETIONARY JUSTICE 222 (1969)[hereinafter cited as DAVIS].)
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> "No other federal, state, or local agency, so far as I know, delegates so much power to subordinates. No other agency, so far as I know, does so little supervising of vital policy determinations which directly involve justice or injustice to individuals. And no other agency, so far as I know, makes policy which in such a large degree is illegal or of doubtful legality." (DAVIS 88.)

25/ Goldstein, Police Policy Formulation: A Proposal for Improving Police Performance, 65 MICH. L. REV. 1123, 1128 (1967).

26/ The National Crime Commission put the matter simply: "law enforcement policy is made by the policeman." NATIONAL CRIME COMMISSION REPORT 10.

Some of this discretion is doubtless desirable; 27/ some, inevitable; but much of its expansive growth is now widely recognized as excessive 28/ -- the product of higher-echelon police officials' abnegation of the responsibility to see that discretion is "canalized within banks that keep it from overflowing," Panama Refining Company v. Ryan, 293 U.S. 388, 440 (1935) (dissenting opinion of Justice Cardozo).

Fourth, the police are characteristically mobilized in a command structure that is highly resistant to external controls. 29/ This tightly regimented form of organization permits swift and relatively effective enforcement of such rules and standards for conduct as the police supervisory personnel may choose to impose upon their subordinates, while at the same time largely isolating the individual policeman from the values -- and insulating him from the constraints -- of the

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27/ See Pierson v. Ray, 386 U.S. 547, 555 (1967).

28/ See, e.g., NATIONAL CRIME COMMISSION REPORT 103-106; POLICE TASK FORCE REPORT 16-18; A.B.A. STANDARDS 116-131, and authorities collected at 119 nn. 117-119; Goldstein, Administrative Problems in Controling [sic] the Exercise of Police Authority, 58 J. CRIM. L., CRIM. & POL. SCI. 160 (1967); Igleburger & Schubert, Policy Making for the Police, 58 A.B.A.J. 307 (1972).

29/ Petitioners' self-conception can be gleened from their description of the police as "a quasi-military organization which operates in accordance with a basic command structure." Brief for Petitioners, p. 39.

broader society. 30/

Fifth, notwithstanding this hierarchic organization, a great deal of police activity that affects citizens most immediately and intrusively -- that is, routine patrol work on the streets -- is not and cannot be directly supervised or seen by superior officers. Unlike firemen who work in teams or soldiers who are led into battle by commanding officers, policemen ordinarily operate alone or in pairs; 31/ and what they do is often of greater visibility to the citizens whom they encounter than to the policemen's own superiors. 32/ The invisibility that cloaks much highly discretionary police behavior leaves room for every form of arbitrariness and prejudice, and furnishes a "fertile breeding ground . . . for such temptations." 33/ See Papachristou v. City of Jacksonville, 405 U.S. 156, 170-171 (1972); NATIONAL CRIME COMMISSION REPORT 115. As Professor Herman Goldstein -- a former assistant to Chicago's Superintendent of Police -- has written:

30/ See, e.g., J. SKOLNICK, JUSTICE WITHOUT TRIAL -- LAW ENFORCEMENT IN DEMOCRATIC SOCIETY 9-14, 182-245 (1966) [hereinafter cited as SKOLNICK]; BITTNER 52-62.

31/ See, e.g., NATIONAL CRIME COMMISSION REPORT 115.

32/ See, e.g., BITTNER 38, 59.

33/ Hornsby v. Allen, 326 F.2d 605, 609 (5th Cir. 1964), on petition for rehearing, 330 F.2d 55 (5th Cir. 1964).

"[T]he criteria that are employed [by individual policemen to determine their actions] emerge largely in response to a variety of pressures . . . and are therefore not carefully developed . . . . And such indefensible criteria as the status or characteristics of the complainant, the victim, or the offender may often be among the most seriously weighed factors, since an officer, left to function on his own, understandably tends to respond to a given situation on the basis of his personal norms regarding individual or group behavior." (Goldstein, Police Policy Formulation: A Proposal for Improving Police Performance, 65 MICH. L. REV. 1123, 1127-1128 (1967).

In this setting, then -- under the conditions of the "actual systems" 34/ within which policemen function -- police departmental self-regulation is indispensable to the maintenance of public security against the ever-present possibility of police misconduct and lawlessness. Fortunately, most police work is competent and professional, respecting as it reinforces the laws that secure a free and orderly society. But over long periods

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34/ Duncan v. Louisiana, 391 U.S. 145, 149 n. 14 (1968).

of time, as thousands of policemen "engaged in the often competitive enterprise of ferreting out crime" 35/ confront hundreds of thousands of citizens in millions of encounters, there will expectably occur some larger or smaller number of excesses and abuses. The frequency with which this Court is obliged to decide, every year, that policemen have violated someone's constitutional rights 36/ serves as a constant reminder that such abuses do occur 37/ -- particularly when it is recalled that

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35/ Johnson v. United States, 333 U.S. 10, 14 (1948).

36/ Consider, during the Court's last complete Term, Norwell v. City of Cincinnati, 414 U.S. 14 (1973); Hess v. Indiana, 414 U.S. 105 (1973); United States v. Calandra, 414 U.S. 338 (1974); Lewis v. City of New Orleans, 415 U.S. 130 (1974); Allee v. Medrano, 416 U.S. 802 (1974). Specific incidents of abuse (whether arising from oppressive purposes or extremely poor judgment) like Norwell preponderate, of course; but widespread patterns and practices of police lawlessness (as in Allee) are not unknown. See, e.g., Davis v. Mississippi, 394 U.S. 721 (1969); Sullivan v. Murphy, 478 F.2d 938 (D.C. Cir. 1973); Schnell v. City of Chicago, 407 F.2d 1084 (7th Cir. 1969); Lankford v. Gelston, 364 F.2d 197 (4th Cir. 1966).

37/ See also, e.g., NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, REPORT 158-159 (G.P.O. 1968); PRESIDENT'S COMMITTEE ON CIVIL RIGHTS, REPORT: TO SECURE THESE RIGHTS 25 (1947); UNITED STATES COMMISSION ON CIVIL RIGHTS, REPORT: MEXICAN AMERICANS AND THE ADMINISTRATION OF

the cases of police abuse which come to court in any form are the tip of the iceberg, 38/ and that the ones which reach

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37/ continued
JUSTICE IN THE SOUTHWEST 2-13 (G.P.O. 1970); UNITED STATES COMMISSION ON CIVIL RIGHTS, REPORT: LAW ENFORCEMENT 20-49, 62-68 (G.P.O. 1965); UNITED STATES COMMISSION ON CIVIL RIGHTS, REPORT: JUSTICE 5-44 (G.P.O. 1961); AMERICAN CIVIL LIBERTIES UNION, POLICE POWER AND CITIZENS' RIGHTS 6-13 (1967); AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA, LAW ENFORCEMENT: THE MATTER OF REDRESS (Institute of Modern Legal Thought 1969); P. CHEVIGNY, POLICE POWER -- POLICE ABUSES IN NEW YORK CITY (1969) [hereafter cited as CHEVIGNY]; R. CLARK, CRIME IN AMERICA 120-121, 143-145 (Pocket Books ed. 1971); E. CRAY, THE BIG BLUE LINE (1967); A. MORALES, ANDO SANGRANDO -- A STUDY OF MEXICAN AMERICAN POLICE CONFLICT (1972); A. REISS, THE POLICE AND THE PUBLIC (1971); SKOLNICK passim; A. TREBACH, THE RATIONING OF JUSTICE 5-6 (1964); W. WESTLEY, VIOLENCE AND THE POLICE (1970); METCALF REPORT ON THE MISUSE OF POLICE AUTHORITY IN CHICAGO (Chicago Defender, July 1973); Bliss, Police Brutality in Chicago, Bad Apples on the Beat, 218 THE NATION 171 (1974); Police Brutality (Chicago Tribune, November 1973).

38/ See, e.g., Goldstein, Administrative Problems in Controling [sic] the Exercise of Police Authority, 58 J. CRIM. L., CRIM. & POL. SCI. 160, 168 (1967):

> "Judicial control is . . . limited to the review of only those aspects of police functioning that relate to acquiring evidence in cases in which there is an intention to initiate a prosecution. Such

this Court are the tip of the tip of the

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> cases represent but a very small segment of the total number of actions in which the police are typically engaged. For every incident in which a police officer exerts his authority as the first step in a process leading to a prosecution, he handles a multitude of other incidents in which he checks out suspicious circumstances, separates combatants, orders people to disperse, or in some other manner uses his powers without effecting an arrest. And even if an arrest is made, it is not always indicative of a desire to prosecute. In many cases it is intended only to serve some other more short-lived objective, such as the harassment of prostitutes or the safeguarding of drunks."

See also L. TIFFANY, D. McINTYRE & D. ROTENBERG, DETECTION OF CRIME 183-199 (1967) [hereafter cited as TIFFANY, McINTYRE & ROTENBERG]; LaFave, Improving Police Performance Through the Exclusionary Rule, 30 MO. L. REV. 391, 421-455 (1965); LaFave & Remington, Controlling the Police: The Judge's Role in Making and Reviewing Law Enforcement Decisions, 63 MICH. L. REV. 987, 1008-1011 (1965); Oaks, Studying the Exclusionary Rule in Search and Seizure, 37 U. CHI. L. REV. 665, 720-724 (1970) [hereafter cited as Oaks]. Professor Egon Bittner has observed that

> "it is exceedingly rare that police actions involving the use of force are actually reviewed and judged by anyone at all." (BITTNER 38.)

iceberg.[39/]

Some abuses will doubtless occur under any system of police management, but their numbers will be larger or smaller depending on the vigilance and the efficiency with which police administrative personnel impose a constitutional discipline upon their troops. The failure of top police department administrators to provide effective systems of self-regulation inevitably condones and encourages police excesses which are beyond the power of the law to control, [40/] and confers enormous powers upon individual policemen -- powers unparalleled in our society in their immediacy, intrusiveness, and physical violence -- without the restraining supervision that is necessary to assure responsibility and lawfulness in their use. We cannot improve here upon the conclusions of Professor Goldstein:

> "[T]he high value which our society places on individual rights requires that there not only be limitations on the authority exercised by governmental agencies, but that there be effective controls to assure that such power is not exceeded or abused. The need for controls is especially acute with the police, for their authority -- to arrest, to detain, to search, and to use force -- is unique among governmental powers in the

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39/ See, e.g., Amsterdam, The Supreme Court and the Rights of Suspects in Criminal Cases, 45 N.Y.U. L. REV. 785, 786-790 (1970).

40/ See pages 37-45 infra.

> degree to which it is disruptive of freedom, invasive of privacy, and sudden and direct in its impact upon the individual." (Goldstein, Administrative Problems in Controling [sic] the Exercise of Police Authority, 58 J. CRIM. L., CRIM. & POL. SCI. 160, 161 (1967).)

It would be surprising if the Constitution of a free society were unconcerned with these problems. Ours unmistakably is not. One of its greatest functions is to maintain the "fundamental distinctions between our form of government, where officers are under the law, and the police-state where they are the law." Johnson v. United States, 333 U.S. 10, 17 (1948). Among the Constitution's high instruments for this purpose are the guarantees of the Bill of Rights and the Fourteenth Amendment. Several of these guarantees manifestly contemplate that police powers must be kept under control if "ordered liberty" [41/] is to survive. [42/] We shall come to the most immediately relevant of the guarantees in a moment. However, it is important to note three points at the outset.

41/ Palko v. Connecticut, 302 U.S. 319, 325 (1937).

42/ The First Amendment imposes restrictions upon police interference with exercises of free speech, e.g., Bachellar v. Maryland, 397 U.S. 564 (1970); Shuttlesworth v. City of Birmingham, 394 U.S. 147 (1969); Kunz v. New York, 340 U.S. 290 (1951); Terminiello v. Chicago, 337 U.S. 1 (1949); Schneider v. State, 308 U.S. 147 (1939); cf. Wolin v. Port of New York Authority,

First, underlying all of the specific guarantees of constitutional liberty and uniting them as a common theme is "protection of the individual against arbitrary action of government." Wolff v. McDonnell, 418 U.S. 539, 558 (1974); see also, e.g., Goss v. Lopez, 419 U.S. 565, 572-576 (1975); Papachristou v. City of Jacksonville, 405 U.S. 156, 162-171 (1972).

42/ continued

392 F.2d 83 (2d Cir), cert. denied, 393 U.S. 940 (1968); the Fourth Amendment constrains them against unreasonable searches and seizures, e.g., Davis v. Mississippi, 394 U.S. 721 (1969); Beck v. Ohio, 379 U.S. 89 (1964); the Fifth and Sixth Amendments set limits upon their extraction of confessions, e.g., Miranda v. Arizona, 384 U.S. 436 (1966); Ziang Sun Wan v. United States, 266 U.S. 1 (1924); Bram v. United States, 168 U.S. 532 (1897), and their pursuit of other investigative procedures that may overreach uncounseled suspects, e.g., United States v. Wade, 388 U.S. 218 (1967); Massiah v. United States, 377 U.S. 201 (1964), who have a right to counsel, see Kirby v. Illinois, 406 U.S. 682 (1972); the Due Process Clause forbids them to brutalize citizens, whether for investigative purposes, e.g., Rochin v. California, 342 U.S. 165 (1952); Williams v. United States, 341 U.S. 97 (1951), or for punitive ones, see, e.g., Screws v. United States, 325 U.S. 91 (1945); and the Equal Protection Clause forbids them to enforce policies of racial or other invidious discrimination, see, e.g., Lombard v. Louisiana, 373 U.S. 267 (1963); Fowler v. Rhode Island, 345 U.S. 67 (1953).

> "When we consider the nature and theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power." Yick Wo v. Hopkins, 118 U.S. 356, 369-370 (1886).

Second, without scrupulous adherence to the rule of law and maintenance of efficacious mechanisms to make it work in the daily encounters of governmental officers and citizens, no guarantee of civil liberty is worth the paper it is written on. First Amendment freedom of speech, for example, is as much abridged when policemen disperse peaceful demonstrators, 43/ or "bust" a pamphleteer, 44/ or confiscate books 45/ or films, 46/ or simply harass those whose speech they disapprove, 47/ as when these persons are prosecuted and convicted or these objects held forfeit by a court of law. Equal protection of the laws is as much denied when policemen use a club as

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43/ See, e.g., Edwards v. South Carolina, 372 U.S. 229 (1963); Guyot v. Pierce, 372 F.2d 658 (5th Cir. 1967).

44/ See, e.g., Schneider v. State, 308 U.S. 147 (1939); Strother v. Thompson, 372 F.2d 654 (5th Cir. 1967).

45/ See, e.g., Stanford v. Texas, 379 U.S. 476 (1965).

46/ See, e.g., Roaden v. Kentucky, 413 U.S. 496 (1973).

47/ See, e.g., Shuttlesworth v. City of Birmingham, 382 U.S. 87 (1965).

when they use a court to enforce discriminatory policies. 48/ But unless regularity and visibility of police activity are assured, police violations of these and every other constitutional right will go unseen and unchecked, for the simple reason that no one can know what policemen in the field are doing or when they are abusing their authority. Not only is it true that "the rule of law implies equality and justice in its application," Papachristou v. City of Jacksonville, 405 U.S. 156, 171 (1972), but it is also true that equality and justice cannot be preserved where relaxation of the rule of law invites and then masks over arbitrary, uncontrolled police behavior.

Third, "'[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury.'" Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388, 397 (1971), quoting Marbury v. Madison, 1 Cranch 137, 163 (1803). "[E]very prohibition implies the existence of rights," Strauder v. West Virginia, 100 U.S. 303, 310 (1880); and the prohibitions of the Constitution assume and require that adequate procedures will be provided to prevent and remedy violations of those rights. See, e.g., Peters v. Kiff, 407 U.S. 493 (1972); North Carolina v. Pearce, 395 U.S. 711 (1969); Jackson v. Denno, 378 U.S. 368 (1964).

48/ See, e.g., Lombard v. Louisiana, 373 U.S. 267 (1963); Wright v. Georgia, 373 U.S. 284 (1963); N.A.A.C.P. v. Thompson, 357 F.2d 831 (5th Cir. 1966).

Two constitutional provisions are particularly implicated by the demonstrated failure of the Philadelphia Police Department to provide such procedures and by the resulting discontrol of individual police officers, which has the "practical effect of . . . [leaving citizens] subject to the discretion of the official in the field" 49/ and of permitting field officers arbitrarily to violate the rights of Philadelphia residents with impunity. The first is the Due Process Clause of the Fourteenth Amendment; the second, the Fourth Amendment's prohibition against unreasonable searches and seizures.

(1) Consistently with the rule of law that is fundamental to Due Process, 50/ no agency or agent of an American government may arbitrarily deprive a citizen of life, liberty or property. See, e.g., Goss v. Lopez, 419 U.S. 565, 572-576 (1975); Wolff v. McDonnell, 418 U.S. 539, 588 (1974); Slochower v. Board of Higher Education, 350 U.S. 551, 559 (1956); In re Oliver, 333 U.S. 257, 278 (1948). For "the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself." Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886). These concepts of "due process in the primary sense," Brinkerhoff-Faris Co. v. Hill, 281 U.S. 673, 681 (1930) are commonly understood today to forbid govern-

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49/ Camara v. Municipal Court, 387 U.S. 523, 532 (1967).

50/ See note 22 supra.

ment officials' taking away even a man's second-class mailing privileges, or his security clearance, or his liquor license, except pursuant to orderly and well-regulated procedures prescribing standards for the officials' action and assuring its consistency and lawfulness. Hannegan v. Esquire, Inc., 327 U.S. 146, 156-159 (1946); Greene v. McElroy, 360 U.S. 474, 507 (1959); Hornsby v. Allen, 326 F.2d 605, 610 (5th Cir. 1964), on petition for rehearing, 330 F.2d 55 (5th Cir. 1964). A tolerable degree of administrative flexibility is, of course, permitted; but this "doctrine . . . never has been carried so far as to permit administrative discretion to run riot." Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 138 (1951)(opinion of Justice Burton, announcing the judgment of the Court). Cf. Morton v. Ruiz, 415 U.S. 199, 231-236 (1974).

If this much be established, is it then possible that police officers can be empowered to intrude upon the lives, liberties and properties of countless citizens -- armed with the most drastic instruments of force known to civilian society -- and to use those instruments as the individual officer may choose, without a semblance of control by his superiors over his too often invisible actions? We submit that the question answers itself "under our system of democratic government, [in which] lawmaking is not entrusted to the moment-to-moment judgment of the policeman on his beat." Gregory v. City of Chicago, 394 U.S. 111, 120 (1969) (concurring opinion of Justice Black), approved in Smith v. Goguen, 415 U.S. 566, 575 (1974); see also Cox v. Louisiana, 379 U.S. 536, 579 (1965)(concurring opinion of Justice Black), quoted in

Shuttlesworth v. City of Birmingham, 382 U.S. 87, 90 (1965); Papachristou v. City of Jacksonville, 405 U.S. 156, 166-171 (1972); Territory of Hawaii v. Anduha, 48 F.2d 171, 173 (9th Cir. 1931). A policeman's decision forcibly to intrude upon the cherished liberties of a free people may not be left to every officer's unconfined, unguided and unreviewed discretion, but is required by Due Process to be governed by reasonably effective restraints and controls. 51/ Due Process therefore does require a police department to provide an adequate tribunal for the hearing and correction of police abuses (compare Brief for Petitioners, p. 39): a procedure that is sufficient to provide and enforce standards for the lawful and constitutional conduct of police operating personnel. "Where, as here, there are no standards governing the exercise of the discretion granted . . . [to individual officers], the scheme permits and encourages an arbitrary and discriminatory enforcement of the law." Papachristou v. City of Jacksonville, 405 U.S. 156, 170 (1972).

51/ As Smith v. Goguen and Shuttlesworth demonstrate, a concern for controlling undue police discretion has emerged as one of the principal bases of the void-for-vagueness doctrine. See 415 U.S. at 572-576; 382 U.S. at 90-91. The same concern has long been reflected in this Court's First Amendment decisions. See, e.g., Cox v. Louisiana, 379 U.S. 536, 557-558 (1965); Niemotko v. Maryland, 340 U.S. 268, 271-272 (1951); Thornhill v. Alabama, 310 U.S. 88, 97-98 (1940).

And "[e]ven in applying permissible standards, officers of a State cannot . . . [trench upon a citizen's vital interests] when there is no basis for their finding that he fails to meet these standards or when their action is invidiously discriminatory." Schware v. Board of Bar Examiners, 353 U.S. 232, 239 (1957). If these rudimentary precepts are to have any meaning on the streets of Philadelphia, the people of that City are entitled to have their police department control its officers by "those minimum procedures appropriate under the circumstances and required under the Due Process Clause to insure that . . . [their rights are] not arbitrarily abrogated," Wolff v. McDonnell, 418 U.S. 539, 557 (1974). 52/

(2) "The basic purpose of . . . [the Fourth] Amendment, as recognized in countless decisions of this Court, is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." Camara v. Municipal Court, 387 U.S. 523, 528 (1967). That Amendment does not countenance regimes of law enforcement under which "the people would be 'secure in their persons, houses, papers, and effects,' only in the discretion of the police." Beck v. Ohio, 379 U.S. 89, 97 (1964). Rather, the central function of the Amendment is precisely to restrain police discretion in the exer-

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52/ See also Davis, Legal Control of the Police, 52 TEXAS L. REV. 703, 708 (1974): "Any administrator with unguided discretionary power violates due process if he fails to confine and structure his discretion to the extent required to avoid unnecessary arbitrariness in the choices made."

cise of the powers of search and seizure,53/ see, e.g., McDonald v. United States, 335 U.S. 451, 455-456 (1948); Johnson v. United States, 333 U.S. 10, 13-17 (1948), so as to prevent "wholesale intrusions upon the personal security of our citizenry," Davis v. Mississippi, 394 U.S. 721, 726 (1969); and see Cupp v. Murphy, 412 U.S. 291, 294 (1973)(dictum). For "[t]he historical judgment, which the Fourth Amendment accepts, is that unreviewed executive discretion may yield too readily to pressures to obtain incriminating evidence and overlook potential invasions of privacy and protected speech." United States v. United States District Court for the Eastern District of Michigan, 407 U.S. 297, 317

53/ Most of the variety of police practices shown by this record and found unconstitutional by the District Court -- investigative detentions, arrests, physical maulings, etc. -- are obviously either themselves "searches" or "seizures" in constitutional contemplation, Cupp v. Murphy, 412 U.S. 291, 294-295 (1973); Terry v. Ohio, 392 U.S. 1, 16-20 (1968), or the means of conducting "searches" or "seizures" in the Fourth Amendment sense, see Schmerber v. California, 384 U.S. 757, 768 (1966). "The manner in which . . . [a] search and seizure . . . [are] conducted is, of course, as vital a part of the inquiry as whether they . . . [are] warranted at all. The Fourth Amendment proceeds as much by limitations upon the scope of governmental action as by imposing preconditions upon its initiation." Terry v. Ohio, supra, 392 U.S. at 28-29. Similarly, the major part of the gamut of commonly reported police abuses, see note 37 supra, plainly implicate the Fourth Amendment guarantee against unreasonable searches and seizures.

(1972). 54/

It is as a check upon executive discretion that the Fourth Amendment requires "'the police . . ., whenever practicable, [to] obtain advance judicial approval of searches and seizures through the warrant procedure.'" Chimel v. California, 395

54/ The Eastern District case concluded that not even the President could be trusted with unchecked discretion to determine whether and when the domestic security of the United States justified invasions of the privacy of citizens. The case thus stands in the great tradition of Entick v. Carrington, 19 Howell St. Tr. 1029 (1765), and the cognate judgments of the Grenville Ministry, which denied executive officials, high or low, "a discretionary power . . . to search wherever their suspicions may chance to fall," Wilkes v. Wood, 19 Howell St. Tr. 1153, 1167 (1763) (summing up by Chief Justice Pratt, later Lord Camden). Both the English and the American history underlying the Fourth Amendment is eloquent with concern against the lodging of an uncontrolled, discretionary seizure power in the executive -- "a power that," in Otis' words, "places the liberty of every man in the hands of every petty officer." Otis' argument against the writs of assistance, as reported in Adams' abstract, 2 L. WROTH & H. ZOBEL (eds.), LEGAL PAPERS OF JOHN ADAMS 141-142 (1965). See, e.g., Stanford v. Texas, 379 U.S. 476, 481-486 (1965); Amsterdam, Perspectives on the Fourth Amendment, 58 MINN. L. REV. 349, 366, 396, 411-412, 450-451 n. 168 (1974).

U.S. 752, 762 (1969). 55/ And when policemen act within one of the "jealously and carefully drawn" exceptions to the warrant requirement, 56/ their actions must be justified by "facts . . . judged against an objective standard," Terry v. Ohio, 392 U.S. 1, 21 (1968), because "[t]he scheme of the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances," ibid. See also Beck v. Ohio, 379 U.S. 89, 93-97 (1964). But by far the overwhelming preponderance of police actions that constitute "searches" and "seizures" in a constitutional sense 57/ will never be scrutinized by any court, because

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55/ See also United States v. United States District Court for the Eastern District of Michigan, 407 U.S. 297, 309-310, 315-318 (1972); Coolidge v. New Hampshire, 403 U.S. 443, 454-455, 474-482 (1971); Vale v. Louisiana, 399 U.S. 30, 34-35 (1970); Mancusi v. DeForte, 392 U.S. 364, 370 (1968); Katz v. United States, 389 U.S. 347, 356-357 (1967); Camara v. Municipal Court, 387 U.S. 523, 528-529 (1967); Stoner v. California, 376 U.S. 483, 486 (1964); Preston v. United States, 376 U.S. 364, 367 (1964); Chapman v. United States, 365 U.S. 610, 613-615 (1961); United States v. Jeffers, 342 U.S. 48, 51 (1951); Agnello v. United States, 269 U.S. 20, 32 (1925).

56/ Jones v. United States, 357 U.S. 493, 499 (1958).

57/ See note 53 supra.

(a) they are taken in the first instance without a warrant, 58/ (b) they produce no evidentiary consequences that call the exclusionary rule into play 59/ -- or, indeed, any consequences that feed into the criminal justice system in any way 60/ --, and (c) they are unamenable to judicial review in a civil lawsuit

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58/ See, e.g., W. LAFAVE, ARREST -- THE DECISION TO TAKE A SUSPECT INTO CUSTODY 15-30, 51-52, 377 (1965) [hereafter cited as LAFAVE]; T. TAYLOR, TWO STUDIES IN CONSTITUTIONAL INTERPRETATION 47-49 (1969); TIFFANY, McINTYRE & ROTENBERG 99-199; LaFave, Improving Police Performance Through the Exclusionary Rule, 30 MO. L. REV. 391, 411 (1965); LaFave & Remington, Controlling the Police: The Judge's Role in Making and Reviewing Law Enforcement Decisions, 63 MICH. L. REV. 987, 991-992 (1965); Note, Philadelphia Police Practice and the Law of Arrest, 100 U. PA. L. REV. 1182, 1183-1184 (1952).

59/ See, e.g., Amsterdam, The Supreme Court and the Rights of Suspects in Criminal Cases, 45 N.Y.U. L. REV. 785, 787-788 (1970); Goldstein, Administrative Problems in Controling [sic] the Exercise of Police Authority, 58 J. CRIM. L., CRIM. & POL. SCI. 160, 168 (1967) (quoted in note 38 supra); LaFave & Remington, Controlling the Police: The Judge's Role in Making and Reviewing Law Enforcement Decisions, 63 MICH. L. REV. 987, 1008-1011 (1965); Oaks, 720-723.

60/ See, e.g., LAFAVE 437-489; Foote, Safeguards in the Law of Arrest, 52 NW. U. L. REV. 16, 25 (1957); LaFave, Improving Police Performance Through the Exclusionary Rule, 30 MO. L. REV. 391, 421-458 (1965).

against the officer because of all the universally acknowledged limitations of such civil lawsuits. 61/ The upshot

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61/ These limitations have been noted so frequently and so invariably that we shall do no more than summarize them here:

(1) Victims of police abuse are ordinarily marginal and vulnerable individuals who are happy enough to escape from the clutches of the police after an incident of abuse has ended, and who cannot (and wisely should not) conceive of increasing their own visibility to the police and thereby risking recriminations by pursuing judicial remedies against an offending officer. In addition, they are too often wholly ignorant of their legal rights and conditioned to the view that they have no legal rights against the police -- that they "can't fight city hall."

(2) These same victims are almost always impecunious and cannot pay a lawyer to sue policemen. They can obtain legal assistance, therefore, only either from one of the very, very few attorneys who has the interest, time and resources to handle police-abuse cases without hope of any compensation (see Alyeska Pipeline Service Co. v. Wilderness Society, 43 U.S.L.W. 4561 (U.S., May 12, 1975)), or from an attorney who is attracted to the case by the possibility of a contingent fee. We believe that we are in a somewhat better position than the petitioners (see Brief for Petitioners, pp. 40-41 and n. 41) to inform the Court about the available resources of civil-rights organizations and similar groups to provide unpaid legal

is that the Fourth Amendment would be

61/ continued

assistance to victims of police abuse; and we can emphatically represent that those resources are puny under the best of circumstances and are strained to nonexistence in localities where inadequate police departmental control mechanisms result in the flourishing of episodes of abuse. As for the contingent fee (see Brief for Petitioners, p. 40), a little realism is in order. We ask this Court to review separately each of the specific incidents of Philadelphia police action described by the findings of the District Court here, 357 F. Supp. at 1294-1316, and consider whether, in any of them, the prospect of a contingent fee would have the remotest, vaguest possibility of attracting an attorney who practices law for a living in Philadelphia or any other urban center. Not only would the chance of successful litigation be pitiably small (see infra) and the amounts of money damages collectible be smaller still, but suits against policemen are notoriously time-consuming and difficult to try, and the attorney who brings them thereby sacrifices the good will of local police officers and agencies which is of inestimable value to many small practitioners for obvious reasons. See Amsterdam, The Supreme Court and the Rights of Suspects in Criminal Cases, 45 N.Y.U. L. REV. 785, 787 (1970).

(3) If a putative police-abuse plaintiff does muster the temerity and the legal resources to sue, he finds juries notably unsympathetic to him inasmuch as he is seldom a pillar of community

rendered nugatory in the major

61/ continued

virtues. (To put this point in perspective by an example, it should be recalled that many insurance companies flatly refuse to issue even automobile liability insurance to unmarried women with male roommates, upon the stated ground that this socially unacceptable relationship makes the women anathema to juries in the event of suit). On the other hand, most juries are highly sympathetic to police defendants.

(4) Various legal rules shield policemen from monetary liability, including the rule of qualified immunity recognized in Wood v. Strickland, 43 U.S.L.W. 4293 (U.S., February 25, 1975); Scheuer v. Rhodes, 416 U.S. 232 (1974); and Pierson v. Ray, 386 U.S. 547 (1967). The purpose of this latter rule is to relieve police decision-making from the inhibiting fear that a policeman will be amerced by damages whenever he makes a wrong decision and acts illegally. Its necessary result is to place heavy reliance upon other mechanisms than the civil damage action -- primarily, of course, intradepartmental corrective mechanisms (see pages 44-45, 53-56 infra) to control the police. For surely there must be some corrective when policemen make wrong decisions and act illegally; and to the extent that qualified immunity forecloses a judicial forum in these cases, some other forum has to be provided for the constant examination and review of police actions that may be wrong and illegal. Otherwise the very concepts that there are right and wrong decisions in the application of constitutional con-

part of its intended restraints if,

61/ continued

straints upon police action, and that those constraints do define differences between legal and illegal police action, disappear, and qualified immunity supplants constitutional legality as the operative code of police performance.

(5) Various practical realities also shield policemen from monetary liability, including the understandable tendency of fellow officers having knowledge of an illegal police action to "close ranks" around the offender and protect him from any extra-police agency, and the fact that the officers in this protective phalanx -- not to speak of the offender himself -- are professionally trained and experienced evidence-gatherers and testifiers.

(6) Policemen are infrequently sufficiently solvent to make suing them worthwhile or to make recoveries against them collectable.

Little wonder, then, that civil damage actions against police officers who act unlawfully are everywhere acknowledged to be ineffectual as a realistic means of confining police behavior within the limits set upon it by the Constitution. See, e.g., Elkins v. United States, 364 U.S. 206, 217-220 (1960); Mapp v. Ohio, 367 U.S. 643, 651-653 (1961); Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388, 421-422 (1971)(dissenting opinion of Mr. Chief Justice Burger); NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE, FINAL REPORT: TO ESTABLISH JUSTICE, TO INSURE DOMESTIC TRAN-

as petitioners incredibly suggest, its enforcement were the exclusive province of the courts. 62/ A rule which thus says that policemen may do anything they please so long as they are not haled before a court and found to have violated the Fourth Amendment is a rule that starts by confusing rights with remedies and ends by denying both.

61/ continued

QUILITY 146 (G.P.O. 1969); POLICE TASK FORCE REPORT 198-200; CHEVIGNY 248-266; LAFAVE 409-427, 486-487; SKOLNICK 223; Foote, Tort Remedies for Police Violations of Individual Rights, 39 MINN. L. REV. 493 (1955); Oaks 673-674; Paulsen, Safeguards in the Law of Search and Seizure, 52 NW. U. L. REV. 65, 72-73 (1957); Spiotto, Search and Seizure: An Empirical Study of the Exclusionary Rule and its Alternatives, 2 J. LEGAL STUDIES 243, 269-272 (1973); Note, Philadelphia Police Practice and the Law of Arrest, 100 U. PA. L. REV. 1182, 1208-1209 (1952). Little wonder also that petitioners have supplied the Court with no empirical foundation for their blithe assertion that "[i]n every single instance of abuse by individual policemen enumerated by the Court below, the legal remedies provided by the Civil Rights Act would have more than adequately compensated the complainants." (Brief for Petitioners, p. 43; see generally id. at 39-44). There simply is none.

62/ Brief for Petitioners, pp. 38-44.

The purpose and command of the Fourth Amendment is not primarily that courts should exclude illegally seized evidence or award damages to the victims of illegal searches and seizures, but that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated" in the first place. "'It would be a grotesque irony if our courts protect only against the unlawful search which actually uncovers contraband (by the exclusionary rule), while offering no relief against an admittedly unlawful pattern and practice affecting hundreds of innocent . . . [citizens].'" Lankford v. Gelston, 364 F.2d 197, 202 (4th Cir. 1966). And the only effective relief against patterns and practices of police illegality that are spawned by policy discontrol is to insist that police officials end the discontrol and curb the illegality.

> "[P]rimary dependence for the control of police conduct must, under any conditions, continue to be placed upon existing systems of internal discipline. An agency functioning outside a police department simply does not have the capacity to substitute for the numerous echelons of supervisory officers that are required around the clock, twenty-four hours a day, to provide the kind of on-the-spot direction and control that is necessary to assure conformity by hundreds and sometimes thousands of police officers to established

> standards of conduct. External controls are likely to be effective only if they induce a desire and willingness on the part of police administrators and their supervisors to elicit conformity from their subordinates." (Goldstein, Administrative Problems in Controling [sic] the Exercise of Police Authority, 58 J. CRIM. L., CRIM. & POL. SCI . 160, 161-162 (1967).)

Elementally, a police department that fails to maintain adequate internal controls over its officers thereby empowers and licenses them to act uncontrollably, in plain violation of the command of the Fourth Amendment which forbids any regime of police power that "places the liberty of every man in the hands of every petty officer." 63/ 64/

63/ This passage from Otis' argument against the writs of assistance is quoted more fully in note 54 supra. See also Stanford v. Texas, 379 U.S. 476, 481 (1965).

64/ The point made in this subsection of the brief parallels that made in Amsterdam, Perspectives on the Fourth Amendment, 58 MINN. L. REV. 349, 414-428 (1974), although the two are not the same. The article urges recognition of a Fourth Amendment requirement that police search-and-seizure activity be suitably regulated by substantive police departmental rules adequate to confine and guide individual policemen in their conduct of field operations, whereas our concern in this brief is with the regularity of remedial or corrective

64/ continued

mechanisms within police departments necessary to assure against the perserverance of lawless searches and seizures. The common theme of the two contentions is that in modern-day police departments, which despatch hundreds or thousands of subordinate officers into the field with vast discretionary powers to search and seize, regular and orderly administrative procedures for the governance of that discretion are an indispensable component of constitutional security of the people "against unreasonable searches and seizures."

III. THE PROPER REMEDY

Police discontrol is therefore a matter of federal constitutional concern, not merely a question of "the wisdom or competence of executive administration." 65/ Faced with a flagrant demonstration of police discontrol such as that depicted by this record, a federal district court invested by Congress with jurisdiction to redress "the deprivation of any rights . . . secured by the Constitution" 66/ might respond in one of three essential ways. 67/

65/ Brief for Petitioners, p. 15. Petitioners' repeated assertions that the courts below decreed relief upon "a theory of administrative inefficiency or inadequacy" rather than "on the basis of constitutional infirmity," Brief for Petitioners, p. 18; see also id. at 20-21, 44, is belied by even the most cursory reading of the opinion of either court. Both specifically found the administrative procedures of the Philadelphia Police Department inadequate to prevent the recurrence of federal constitutional violations. See, e.g., 357 F. Supp. at 1318, 1321; 506 F.2d 547-548.

66/ Rev. Stat. §1979 (1875), 42 U.S.C. §1983 (1970).

67/ This is plainly not a case where abstention is permissible, see Kusper v. Pontikes, 414 U.S. 51, 54-55 (1973); and the exercise of federal jurisdiction may not, of course, be deferred here pending exhaustion of state remedies, see, e.g., Allee v. Medrano, 416 U.S. 802, 814 (1974).

First, it might do nothing. That is the response which petitioners ask this Court to hold is the only permissible one, 68/ even though it leaves a permeating pattern of acknowledged federal constitutional violations unremedied. Such would be its indisputable effect because the other "remedies" 69/ which petitioners characterize as "adequate" 70/ are a snare and a delusion. Civil damage actions 71/ are woefully ineffectual to halt proliferating police misconduct; 72/ criminal prosecutions of the offending officers 73/ are worse than ineffectual; 74/ and it strains both

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68/ Petitioners ask this Court to reverse an exercise of the broad remedial discretion of the District Court (see pages 58-60 infra) which has been affirmed by the Court of Appeals upon a record showing extensive police lawlessness and continuing toleration of that lawlessness by police supervisory personnel. If the Court does so, it is difficult to imagine any situation in which a federal district court could decree relief for police discontrol.

69/ Brief for Petitioners, p. 40.

70/ Brief for Petitioners, p. 43. See generally id. at 39-44.

71/ See Brief for Petitioners, pp. 40-43.

72/ See note 61 supra. The District Court so found at 357 F. Supp. at 1319.

73/ See Brief for Petitioners, p. 40 n. 22.

74/ See, e.g., COMMITTEE FOR ECONOMIC DEVELOPMENT, REDUCING CRIME AND ASSURING JUSTICE 37 (1972); LAFAVE 425-427; Schwartz, Complaints Against the Police: Experience of the Community Rights Division of the Philadelphia District Attorney's Office, 118 U. PA. L. REV. 1023 (1970). The District Court so found at 357 F. Supp. at 1319-1320.

credibility and law to suggest 75/ that municipal politics contains the solution to the problem. 76/

We submit that it would be derelict and unconscionable for a constitutional court of equity to do nothing in these circumstances. "'[W]here federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief.'" Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics, 403 U.S. 388, 392 (1971), quoting Bell v. Hood, 327 U.S. 678, 684 (1946).

It is much too late in the day for new "hands off" doctrines that entirely insulate enclaves of state official activity from the "varied avenues of relief . . . for vindication of . . .

75/ See Brief for Petitioners, pp. 20-21 and n. 15.

76/ Federal constitutional rights "may not be submitted to vote; they depend on the outcome of no elections." West Virginia State Board of Education v. Barnette, 319 U.S. 624, 638 (1943). See also Monroe v. Pape, 365 U.S. 167, 182-183 (1961).

Municipal politics finally terminated Philadelphia's brief experience with a civilian review board. See 357 F. Supp. at 1294. While such a board might indeed provide a constructive alternative to intradepartmental regulatory mechanisms, see Burger, Who Will Watch the Watchman?, 14 AMERICAN U. L. REV. 1 (1964); AMERICAN CIVIL LIBERTIES UNION, POLICE POWER AND CITIZENS' RIGHTS (1967), we do not understand petitioners to contend that this is what the courts below should have ordered.

federal rights" 77/ which alone can make the Constitution an instrument of living government instead of an embittering package of unkept promises. 78/ See, e.g., Breed v. Jones, 43 U.S.L.W. 4644, 4647 (U.S. May 27, 1975); Goss v. Lopez, 419 U.S. 565 (1975); Wolff v. McDonnell, 418 U.S. 539 (1974); Terry v. Ohio, 392 U.S. 1 (1968); Camara v. Municipal Court, 387 U.S. 523 (1967); Bond v. Floyd, 385 U.S. 116 (1966). The teaching of all these cases is that the accommodations of a wise federalism are to be made by acknowledging legitimate state interests in the contents of federal constitutional doctrine 79/ and the flexibility of federal remedies 80/ -- not by walling off preserves of arbitrary state action and declaring them wholly unaccountable to constitutional correction. Police misconduct, particularly, has never been thus walled off. See, e.g., Hague v. C.I.O., 307 U.S. 496 (1939). "Where, as here, there is a persistent pattern of police misconduct, injunctive relief is appropriate." Allee v. Medrano, 416 U.S. 802, 815 (1974).

No other rule can be admitted if the "basic guarantees of our Constitution are [to be] warrants for the here and now." 81/ This is Congress' judgment, made a century ago. See Rev. Stat. §1979 (1875), 42 U.S.C. §1983 (1970); Monroe v. Pape, 365 U.S. 167, 172-183 (1961).

77/ Johnson v. Mississippi, 43 U.S.L.W. 4553, 4558 (U.S., May 12, 1975)

78/ See Lankford v. Gelston, 364 F.2d 197, 204 (4th Cir. 1966).

79/ See, e.g., Wolff v. McDonnell, 418 U.S. 539, 560-563 (1974).

80/ See, e.g., Lemon v. Kurtzman, 411 U.S. 192 (1973).

81/ Watson v. City of Memphis, 373 U.S. 526, 533 (1963).

> "In . . . expanding federal judicial power [by this enactment], Congress imposed the duty upon all levels of the federal judiciary to give due respect to a suitor's choice of a federal forum for the hearing and decision of his Federal constitutional claims. Plainly, escape from that duty is not permissible merely because state courts also have the solemn responsibility, equally with the federal courts, ' . . . to guard, enforce, and protect every right granted or secured by the Constitution of the United States . . . ,' . . . .
> 'We yet like to believe that wherever the federal courts sit, human rights under the Federal Constitution are always a proper subject for adjudication, and that we have not the right to decline the exercise of that jurisdiction simply because the rights asserted may be adjudicated in some other forum.' . . . ."
> (Zwickler v. Koota, 389 U.S. 241, 248 (1967). Accord: Steffel v. Thompson, 415 U.S. 452 (1974).)

A fortiorari, where no other forum can provide effective remedies for recurring federal constitutional violations, a federal district court should not refuse relief.

Second, a federal district court confronted with a record of police discontrol might undertake to restore control by establishing its own governance over affected

sectors of police behavior through a mandatory or prohibitory injunction. No doubt such relief is appropriate in some cases. 82/ But its intrusive quality makes it a remedy of last resort, particularly where the police discontrol is so pervasive that its correction would involve the district court in "continuous or piecemeal interruption" of police operations in the course of "an ongoing federal audit." O'Shea v. Littleton, 414 U.S. 488, 500 (1974). Certainly the District Judge in these cases, cognizant of the wide-ranging but random and haphazard pattern of police illegality in Philadelphia, could properly conclude that the assumption of direct court control over a necessary spectrum of Philadelphia Police Department activities would be unworkable: -- that it might merely draw the court into continuing rounds of hearings as new federal constitutional violations were expectably reported during the life of any injunction, while simultaneously failing to correct many instances of police lawlessness that could not practicably be brought to the court's attention because of their low visibility.

Third, the district court could forthrightly address the source of the problem, and -- without embroiling itself in the business of operational police management -- order the police

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82/ See, e.g., Cottonreader v. Johnson, 252 F. Supp. 492 (M.D. Ala. 1966); United States v. City of Grenada, 11 Race Rel. L. Rep. 1782 (N.D. Miss. 1966); Cunningham v. Grenada School District, 11 Race Rel. L. Rep. 1776 (N.D. Miss. 1966); Williams v. Wallace, 240 F. Supp. 100 (M.D. Ala. 1965); Hicks v. Knight, 10 Race Rel. L. Rep. 1504 (E.D. La. 1965).

department to control its own officers in a manner that is likely to provide sufficient protection against the recurrence of constitutional violations. This approach does not involve judicial supersession of police administrative authority, but it necessarily does involve a judicial analysis and appraisal of the police department's internal control procedures in order to assure that those procedures are effectual to furnish the necessary degree of control. Such analysis and appraisal is a commonplace of constitutional litigation in many contexts. E.g., Younger v. Gilmore, 404 U.S. 15 (1971), aff'g Gilmore v. Lynch, 319 F. Supp. 105 (N.D. Cal. 1970); North Carolina v. Pearce, 395 U.S. 711 (1969); Green v. County School Board, 391 U.S. 430 (1968). So is the implementing practice, in injunctive actions, of requiring state administrative officials to submit plans of operation and procedure for the federal district court's evaluation and approval. E.g., Procunier v. Martinez, 416 U.S. 396 (1974); Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971); Wolin v. Port of New York Authority, 392 F.2d 83 (2d Cir.), cert. denied, 393 U.S. 940 (1968). The District Court below did nothing more or less in these cases, and what it did was eminently proper.

Surely the court stood on sound ground in concluding that "revision of procedures for handling civilian complaints is a necessary first step in attempting to prevent future abuses," 357 F. Supp. at 1321, like those which it found to have flourished under "the existing procedures, or lack of procedures" of the Philadelphia Police Department, id. at 1320. See pages 7-9 supra. In the universal opinion of those who have studied the problem of controlling excesses and abuses of police power, ade-

quate citizen-complaint mechanisms are an indispensable safeguard against official lawlessness. See, e.g., NATIONAL CRIME COMMISSION REPORT 102-103, 115-116; POLICE TASK FORCE REPORT 29, 193-197; NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, REPORT 162-163 (G.P.O. 1968); NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE, FINAL REPORT: TO ESTABLISH JUSTICE, TO INSURE DOMESTIC TRANQUILITY 145-147 (G.P.O. 1969); A.B.A. STANDARDS 163-167; COMMITTEE FOR ECONOMIC DEVELOPMENT, REDUCING CRIME AND ASSURING JUSTICE 36 (1972); SAN FRANCISCO COMMITTEE ON CRIME, REPORT: SAN FRANCISCO POLICE DEPARTMENT 91 (Western Star Press ed. 1971); Note, Grievance Response Mechanisms for Police Misconduct, 55 VA. L. REV. 909 (1969); Note, The Administration of Complaints by Civilians Against the Police, 77 HARV. L. REV. 499 (1964). As all of these studies attest, adequate complaint mechanisms manifestly are not "counter-productive [sic] to the Department's primary mission to prevent and detect crime . . . [or] inimical to the public interest." 83/ Rather, the efficiency of law enforcement is enhanced by procedures which assure that brutal, arbitrary or lawless police actions are called to account and corrected by police management. 84/ Any other view reflects extreme

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83/ Brief for Petitioners, p. 15.

84/ "The institution of an effective external complaint procedure is not a tactic designed to limit an agency's legitimate activities. Quite the contrary, an effective and properly administered external complaint procedure can be beneficial for the public, the officer,

short-sightedness regarding both the "mission" of the police and the importance

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84/ continued

and the agency. It reassures the general public that the police agency respects the rights of citizens and corrects inappropriate behavior. If utilized properly, the complaint process is an asset to the police officer because it assures him that if he conducts himself in a proper manner he will be protected from unwarranted criticism and discipline.

"As a management technique, it is a cogent device to measure the validity of certain policy and procedural statements. Properly utilized, the complaint process serves management by providing statistical evidence of any conflict which exists between the community and the department's policies and procedures. Similarly, continuing evidence of conflicts between individual officers and citizens is a useful indication of emotional problems affecting a particular officer or an indication that a particular policy may not have been well understood by all officers, whether because of poor communications or ineffective training." ([CALIFORNIA] ATTORNEY GENERAL'S ADVISORY COMMISSION ON COMMUNITY-POLICE RELATIONS, REPORT: THE POLICE IN THE CALIFORNIA COMMUNITY 9-6 - 9-7 (March 31, 1973).) See also CRIMINAL JUSTICE STANDARDS REPORT 469-491.

of constitutional values in the social order which the police are sworn to preserve. 85/

85/ Pages 29-35 of the Brief of Petitioners enumerate the various ways in which citizen-complaint procedures will purportedly interfere with the police mission to fight crime. All are highly speculative. Two courts below, both duly solicitous of the vital functions of the police (see, 357 F. Supp. at 1317; 506 F.2d at 547), were unconvinced that these procedures would hinder lawful police activities. As the Court of Appeals noted, "the procedures which the district court required be implemented by the police department for the receipt, investigation, and disposition of civilian complaints are fully in accord with the American Bar Association Standards Relating to the Urban Police Function, which were unanimously approved by the Executive Committee of the International Chiefs of Police in December, 1972." 506 F.2d at 548. We might also add that the "45 day limits" to which petitioners particularly object (Brief for Petitioners, p. 31; see also id. at 30) allow (a) one and a half times the period for processing complaints that is recommended by two other comprehensive studies of police disciplinary systems, see POLICE TASK FORCE REPORT 197; CRIMINAL JUSTICE STANDARDS REPORT 483, 486, and (b) relaxation "for extenuating circumstances stated in the file and approved by the Chief Inspector, Internal Affairs Bureau" (Appendix to Petition for Certiorari, p. 28a) -- a provision unaccountably omitted in petitioners' description and discussion of the District Court's decree. Footnote 85/ continued

Nor can the District Court be held in error for its specific findings and correctives of the deficiencies in the citizen-complaint procedures of the Philadelphia Police Department, which it summarized as follows:

> "(1) The departmental procedures are geared to handle infractions of police rules and regulations, yet these rules and regulations are not framed to cover specific violations of the legal and constitutional rights of civilians; (2) Complaints are handled on a 'chain of command' basis, and this results in a tendency to minimize and discourage citizen complaints; (3) The existing procedures do not provide adequate opportunity for the civilian complainant to present his case, before a relatively objective tribunal; and (4) The outcome of the proceeding is not disclosed." (357 F. Supp at 1320.)

85/ continued

At bottom, petitioners' objections to the District Court's decree are obviously based less upon concerns of practicability than upon a set of priorities that regards enforcement of the Constitution as trivial compared with enforcement of the criminal law. Fortunately, that view has been repudiated by Anglo-American courts ever since Lord Camden decided in Entick v. Carrington, 19 Howell St. Tr. 1029 (1765) that "[t]he mere need to solve crimes . . .

The first of these deficiencies (as petitioners frankly admit 86/) constitutes a total abnegation of the Department's responsibility to enforce constitutional restraints upon its officers' behavior, and is fatal for the reasons set forth in Part II of this brief. The remaining three deficiencies, singly and in Kafkaesque combination, render the Department's complaint procedures futile "to insure that administrators . . . , where fundamental constitutional rights may have been abridged, will act fairly," Wolff v. McDonnell, 418 U.S. 539, 565 (1974), and were therefore correctible within the District Court's broad equitable discretion to "suit proceedings and remedies to the circumstances of cases and formulate them appropriately to safeguard, conveniently to adjudge and promptly to enforce substantial rights of all the parties before them." Alexander v. Hillman, 296 U.S. 222, 239 (1935).

It is unclear to us whether petitioners now intend to make an independent attack upon the particular means which the District Court employed to correct these four deficiencies. Such an attack

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85/ continued

did not allow the law to place its own enforcement above other values." J. LANDYNSKI, SEARCH AND SEIZURE AND THE SUPREME COURT 59-60 (Johns Hopkins University Studies in Historical and Political Science, Ser. 84, No. 1, 1966). See Note 7 supra.

86/ Brief for Petitioners, p. 38-39.

is plainly not contemplated by the Questions Presented on page 4 of the petition for certiorari on page 3 of petitioners' brief; and petitioners' several quarrels with the details of the "procedures proposed by the District Court [to] govern the investigation of . . . complaints" 87/ appear to be introduced into their brief not so much to invite this Court's review of the specifics as to exemplify the supposed unwisdom of any sort of federal judicial intervention into Philadelphia Police Department affairs. In any event, an attack upon the specifics of the proposed Police Directive attached as Appendix A to the final judgment of the District Court would be improvident, both because that judgment requires only that the Police Department "promulgate as an intra-departmental directive procedures for the receipt, investigation and disposition of civilian complaints of police misconduct, substantially in the form of the procedures attached to this Order as Appendix 'A'" (Appendix to Petition for Certiorari, p. 20a, emphasis added), and because the procedures described in the proposed directive are well within the remedial discretion of the District Court. 88/

87/ Brief for Petitioners, p. 29. See generally id. at 29-35.

88/ "Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 15 (1971). See also, e.g., United States v. Loew's Inc., 371 U.S. U.S. 38, 52-53 (1962); United States v. United States Gypsum Co., 340 U.S.

CONCLUSION

There is no war between constitutional liberties and the role of the police in a democratic society. Rather, police discontrol and the lawlessness which it spawns are at war with both the Constitution and efficiency in law enforcement The Court of Appeals below was plainly right in concluding that police control "must be maintained because of the tremendous importance of police work to

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88/ continued

76, 88-89 (1950), and cases cited. When matters of importance affecting the public generally are involved, "'those equitable powers assume an even broader and more flexible character . . .'" Mitchell v. Robert DeMario Jewelry, Inc., 361 U.S. 288, 291 (1960). The exercise of these broad powers is committed to the sound discretion of the district court: "[t]he essence of the equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case," Hecht Co. v. Bowles, 321 U.S. 321, 329 (1944). See also Holmberg v. Armbrecht, 327 U.S. 392, 396 (1946). Accordingly, "[i]n shaping equity decrees, the trial court is vested with broad discretionary power; appellate review is correspondinly narrow," Lemon v. Kurtzman, 411 U.S. 192, 200 (1973) (plurality opinion of Mr. Chief Justice Burger), particularly "in cases turning on peculiarly local conditions and circumstances," Mayor of Philadelphia v. Educational Equality League, 415 U.S. 605, 621 n. 20 (1974).

the maintenance of an orderly society without which no rights can survive." 89/ And, on this record, "[t]he grave character of the department's conduct places a strong obligation on the courts to make sure that similar conduct will not recur." 90/

The judgment below should be affirmed.

Respectfully submitted,

July 21, 1975

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89/ 506 F.2d at 547, emphasis added.

90/ Lankford v. Gelston, 364 F.2d 197, 203 (4th Cir. 1966).

Supreme Court, U. S.
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In the Supreme Court of the United States

October Term, 1975
No. 74-942

FRANK L. RIZZO, et al.,
Petitioners,

v.

GERALD G. GOODE, et al.,
Respondents

HONORABLE JAMES H. J. TATE,
FRANK L. RIZZO, et al.,
Petitioners,

v.

COUNCIL OF ORGANIZATIONS ON PHILADELPHIA POLICE ACCOUNTABILITY AND RESPONSIBILITY, et al.,
Respondents

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF OF THE COMMONWEALTH OF PENNSYLVANIA AMICUS CURIAE

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Pursuant to Rule 42(4) of the Rules of the Supreme Court of the United States, the Commonwealth of Pennsylvania respectfully submits this brief as an *amicus curiae*.

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STATEMENT OF INTEREST

The Commonwealth of Pennsylvania (hereinafter Commonwealth) maintains a strong interest in the development of effective law enforcement to protect the personal and property rights of its citizens, while at the same time alleviating the causes and effects of community unrest and the resulting alienation of minority people. The Commonwealth is, therefore, interested in this matter because of a concern for its citizens, particularly in urban areas, in terms of both the adequacy of police protection and the unequal application of police force in many communities.

The Commonwealth, through the Attorney General, has a responsibility under the law to "take such steps, and adopt such means, as may be reasonably necessary to enforce the laws of the Commonwealth." 71 P.S. §294(b) (1962). The Attorney General's office has investigated many instances of inappropriate police conduct by officers of the Philadelphia Police Department. In analyzing the means toward correcting patterns of illegal behavior and activity, the Attorney General has concluded that lawful and just disciplinary procedures are a necessary prerequisite to good law enforcement. In fact, the Commonwealth believes that where there is adequate communication and accountability between police and the communities and where disciplinary procedures are responsive to instances of injustice and unrest, the police can more effectively and efficiently provide law enforcement services.

The present case challenging the Philadelphia Police Department's procedure, or lack of procedure, for handling civilian complaints of police misconduct is vital to all citizens of Pennsylvania. The District Court's final judgment provided measures to enable citizens to redress their grievances more easily. The judgment would also facilitate the handling of these complaints since the Police Department would have guidelines requiring a fair and speedy resolution of a complaint. Without the procedures set forth in the final judgment, relations between the police and the community will continue to deteriorate from a lack of cooperation and confidence to the detriment of the Commonwealth and its citizens.

The District Court's remedy is endorsed by the Commonwealth since it provides a lawful, effective mechanism to investigate inappropriate governmental action and correct existing abuses that frequently have contributed to civil disturbance and violation of laws.

COUNTER-STATEMENT OF THE CASE

The Commonwealth of Pennsylvania, *Amicus Curiae*, adopts the Respondents' counter-statement of the case.

ARGUMENT

I. Citizen Charges of Misconduct by Officers of the Philadelphia Police Department Continue to Exist and Evidence Indicates That the Number of Complaints Is Increasing

Complaints about police misconduct in Philadelphia are not new. In the last ten years, however, the number of allegations of police abuse has increased alarmingly. What was once a problem circumscribed to certain areas, namely those populated by minorities, has now spread out into virtually all parts of the city so that no longer is anyone immune from the effects of police harassment.[1]

Because of this growing number of citizen complaints, the Attorney General of Pennsylvania established a special unit in November, 1970 to review complaints of police misconduct in Philadelphia. Complaints received by that office include charges of unlawful use of deadly force, unlawful beatings of people, false charges placed against citizens even though no illegal act was committed, discriminatory enforcement of the law, and continuous harassment. Beginning January, 1974, in an attempt to document and detail the size and range of the problem, the Department of Justice began compiling statistics on police misconduct from its own office and from seven groups in the city. The data compiled for three successive six month periods indicates not only that the number of citizen complaints is substantial, but also that it is continuing to grow.

[1] Pollack, *Police Abuse: How It Is Ignored*, Philadelphia Inquirer, February 16, 1975, at 1-A, col. 1. This was the first of a three part series on police abuse in Philadelphia that resulted from an exhaustive seven month investigation conducted by the Philadelphia Inquirer. The subsequent parts of the series appeared February 17 and 18, 1975.

Moreover, even in the space of this relatively short year and a half period, complaints have increased sharply. During the period of January 1, 1974 through June 30, 1974, 71 complaints of police abuse were recorded. This number increased to 156 during the period of July 1, 1974 through December 31, 1974. The rise in complaints continued during the period of January 1, 1975 to June 30, 1975 when the number rose to 199. If this trend persists, twice as many complaints will be filed in 1975 as in 1974.

Following is a breakdown of police misconduct complaints by type of complaint for the three successive six month periods.[2]

[2] Data collected by the Community Advocate Unit of the Pennsylvania Department of Justice and from seven agencies and community groups handling police complaints.

Charges of Police Abuse Against Philadelphia Police Officers

Time Period	1/1/74-6/30/74	7/1/75-12/31/75	1/1/75-6/30/75	Total
Incidents[3]	71	156	199	426
Complaints Against Police				
Abuse of Force[4]	60	124	121	305
Major Injury[5]	22	20	28	70
Medium Injury	20	52	34	106
Minor Injury	14	47	48	109
Property Taken or Destroyed	9	15	28	52
Illegal Search or Arrest	19	68	74	161
Other	8	36	42	86

Examining the data further indicates that a charge of police abuse was lodged by a citizen at the rate of one every 38 hours in 1974 and rose to one every 27 hours in 1975. However, the actual rate of complaints appears to be much higher. Police Commissioner Joseph O'Neill stated that the statistics were inaccurate "because police received a total of 902 complaints during the year." Philadelphia Inquirer, January 29, 1975 at 1-B, col. 3. It is important to note that by the Police Commissioner's own statement this would indicate that the police are actually receiving complaints at the rate of two to three a day.

[3] Each incident may include more than one complaint of police misconduct.

[4] In twenty cases throughout the 18 month period no indication of the type of injury was designated.

[5] Major injury required hospital treatment. Medium injury required out-patient doctor treatment. Minor injury required no medical attention.

Further evidence of an increase in the number of citizen complaints can be found in the *Philadelphia Inquirer* investigative series on police abuse. The series of articles made the following findings:

> "There is no disputing that the number of complaints of police abuse and brutality in Philadelphia continues to rise, year after year." Philadelphia Inquirer, Feb. 16, 1975, at 1-A, col. 5.
>
> "Police abuse of citizens, once restricted to lower-class black neighborhoods, has spread through the city; complaints of police brutality are now lodged regularly against officers in virtually every police district." *Id.*, at col. 3.

II. All Present Remedies Available to Citizens of Philadelphia Who Have Grievances Against the Police Continue To Be Inadequate

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In the District Court opinion,[6] Judge Fullam found that:

> "Existing procedures for handling civilian complaints and for enforcement of police discipline related to civilian complaints is totally in-

[6] *Council of Organizations on Philadelphia Police Accountability and Responsibility (COPPAR) et al. v. Frank L. Rizzo, et al.*, 357 F. Supp. 1289 (E.D. Pa. 1973).

adequate," 357 F. Supp. at 1318, ". . . that little or nothing is done by the city authorities to punish such infractions," *Id.* at 1319 and that ". . . except in cases of severe injuries, existing remedies are inadequate to protect the public interest involved." *Id.* at 1319.

Since Judge Fullam's opinion was issued on March 14, 1973, there has been virtually no progress in expanding legal remedies for police abuse. This is true not only with regard to remedies within the Police Department, but in the District Attorney's office and with private civil damage suits as well.

A. Disciplinary procedures within the Philadelphia Police Department for handling complaints of police misconduct continue to be totally inadequate.

A police department that has in the last ten years grown in size and strength has also moved to be increasingly isolated from the people it serves. The well known "cop on the beat" is now seen through the insulation of a cruising patrol car. In their day-to-day work police are constantly on the front line; viewing themselves as vulnerable, many times they react to attacks, genuine or imaginary, with force. But without internal checks and balances in the department or the development of public accountability procedures, police have not had to contend with limits or constraints upon their power.

In May, 1974, the Citizens' Crime Commission of Philadelphia (hereinafter "Commission") issued a report entitled *Police Internal Affairs: An Analysis of Policies, Procedures and Guidelines of Internal Discipline, Philadelphia Police Department.*[7] The report studied various aspects of the internal disciplinary procedure of the Philadelphia Police Department and compared them with the National Advisory Commission on Criminal Justice Standards and Goals report, entitled *Report on Police.*[8] This Commission report, issued more than one year after Judge Fullam's opinion, showed that even after the issuance of the opinion the Philadelphia Police Department had still undertaken no effort to improve its grievance procedure.

The problems studied and the recommendations of both the National Advisory Commission and the Commission are almost identical to the finding of Judge Fullam and the relief granted in his final judgment. The Commission found inadequate procedures regarding the present complaint form, information on how to file a complaint, notification to the complainant of

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[7] Hereinafter Commission Report ("Com. Rep."). The Commission is a nonpartisan organization concerned with the reduction of crime and crime prevention. It is a community-based organization, of approximately 300 members primarily composed of business people and attorneys.

[8] National Advisory Commission on Criminal Justice Standards and Goals Task Force Report, Report on Police (Government Printing Office, No. Y3.C86:2P75 1973). The National Advisory Commission on Criminal Justice Standards and Goals, hereinafter "National Advisory Commission," is a Presidentially created advisory committee that is mandated to set standards that would enable a police department to establish and maintain an efficient, responsive system of discipline, while recognizing that discipline and accountability are essential if a police department is to engender public confidence, maintain effective performance and preserve employee morale.

final disposition, and in statistical record keeping of citizen complaints. A summary of the relevant findings and recommendations of the Commission's report includes the following:

Complaint Verification—The Commission recognized that present complaint forms are inadequate and went on to say that the "[p]olice must make every effort to convince the public that they are truly receptive to complaints. A lack of citizen participation will be contrary to the best interest of a police agency since instances of employee inefficiency and misconduct will not be revealed." Com. Rep. at 26. It recommended that the police department produce new prenumbered written complaint forms, to be filled out for each complaint and signed by the person receiving the complaint. Com. Rep. at 26. This recommendation is almost identical to Judge Fullam's Final Judgment on complaint forms and their distribution (App. Cert. Pet. 21a, 22a).[9]

Public Information on Complaint Procedure—The Commission found that various police departments have initiated public information programs through the distribution of printed material describing the policies and procedures used for internal discipline. However, the report, found that "[i]n Philadelphia there is no such information program with regard to the issuance or the making of a formal complaint regarding police misconduct." Com. Rep. at 27.

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[9] *Goode v. Rizzo*, Civil No. 70-491 (E.D. Pa., Oct 5, 1973). Page references to the District Court's unreported Final Judgment are to the Appendix to the Petition for Writ of Certiorari and are designated ("App. Cert. Pet.") and appropriate page number.

The Commission therefore recommended that the "Police Department produce and distribute to the public a pamphlet that spells out procedures that should be followed for filing complaints against the police and how such complaints are processed." Com. Rep. at 27. This procedure directly corresponds to the wide circulation of the intradepartmental directive covering receipt, investigation and disposition of civilian complaints of police misconduct required by the District Court in the Final Judgment (App. Cert. Pet. 21a, 22a).

Notification of Complaint Disposition—The Commission found that the Police Department only notifies the complainant orally of its final action. Therefore, the Commission recommended that "notification of the disposition of a civilian complaint against the police should be given in writing." Com. Rep. at 27. Judge Fullam's final order also required notice of disposition of the complaint be given to the complainant in writing (App. Cert. Pet. 31a, 34a, 36a).

Complaint Record Keeping and Disclosures of Statistics—The Commission found that the Philadelphia Police Department does not regularly release statistics regarding internal disciplinary action. It, therefore, recommended compilation of statistics indicating the disposition of complaints, both civilian and from within the department. The recommendation suggested that these statistics "should be made available for proper purposes to the public and other law enforcement agencies at regular intervals." Com. Rep. at 29. Judge Fullam also required that the Police Department maintain adequate statistical records, and annual summaries to provide an adequate basis for evaluation of

the program for handling civilian complaints (App. Cert. Pet. 36a, 37a).

Upon reviewing the findings and recommendations of the Commission Report, it becomes evident that the same problems in citizen complaint procedures were found to exist in May, 1974 by the Commission that had existed in March, 1973 when Judge Fullam issued his opinion. Indeed, the Commission recommended similar changes as those ordered by the District Court.

In its conclusion, the Commission Report stressed the many positive effects that would result from adoption of its recommendations by the Commissioner of Police:

> "The Crime Commission believes that if the recommendations contained in this report are implemented, a major step will have been taken in moving against the corruption that unfortunately pervades to a greater or lesser degree all large city police departments." Com. Rep. at 51.

However, to this date, the Police Department has failed to implement any of the recommendations advanced by the Commission.

Further evidence of the inadequacy of the internal Police Department complaint procedure was found in the *Philadelphia Inquirer* investigation into police misconduct:

> ". . . Philadelphia policemen who abuse their authority are rarely disciplined for their misdeeds." Philadelphia Inquirer, Feb. 16, 1975, at 1-A, col. 2-3.

> "Independent witnesses to police abuse are treated rudely and are generally discouraged in their efforts to help discipline policemen." *Id.* Feb. 17, 1975, at 1-A, col. 3.
>
> "Fewer than one out of every 10 officially requested complaints of police misconduct ever reach the department's disciplinary body, the Police Board of Inquiry." *Id.* Feb. 16, 1975, at 1-A, col. 5.

It is clear from both the Citizens' Crime Commission Report and the result of investigations conducted by the *Philadelphia Inquirer* that the present internal procedures for handling civilian complaints of police misconduct are completely insufficient to curb abuse.

B. Filing of complaints with the District Attorney's office has resulted in very few indictments of police officers and continues to be an unsatisfactory remedy.

In his opinion, Judge Fullam concluded that: "Except in extreme cases, criminal prosecutions are unlikely; and in any event, given the dual role of the District Attorney's staff, such prosecutions are a most unsatisfactory vehicle for vindication of the rights involved." 357 F. Supp. at 1319, 1320.

He based this conclusion on findings that: (1) In cases where a citizen complaint was filed with the District Attorney's office,[10] that office may already be

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[10] Rule 133 of the Pennsylvania Rules of Criminal Procedure requires that private criminal complaints be filed with the District Attorney.

prosecuting the complainant on charges arising from the same incident, therefore, causing a conflict, *Id.* at 1294; (2) Prosecutions were not found to occur unless serious injuries were sustained, *Id.*; (3) Citizen complaints were dropped in exchange for the dropping of criminal charges against the complainant, *Id.*; and (4) The District Attorney's office did not ordinarily communicate to the complainant its decision not to prosecute the police officer. *Id.*

The same conditions mitigating against criminal prosecution of police officers by the District Attorney's office continue to exist at the present time. From September 1, 1974 through June 26, 1975, 83 citizen complaints of police misconduct were received and investigated by the District Attorney's office. Yet, in only three cases were policemen indicted.[11] This statistic alone would seem to indicate that the filing of criminal charges with the District Attorney has not been an effective remedy.

The data collected by the Attorney General's office[12] in 1974 and the first half of 1975, indicated that in over 66 percent of the complaints (282), criminal charges were filed by police against the complainant. The overwhelming number of these, 68 percent of the complaints (191), involved charges of assault and battery on a policeman, disorderly conduct, resisting arrest or other such charges which arose out of the

[11] Information released in January, 1975, by John Morris, Assistant District Attorney, Chief of Investigations, Philadelphia, and in July, 1975, by Esther Sylvester, Assistant District Attorney, Chief of Investigations, Philadelphia.

[12] See note 2, supra.

same incident.[13] Therefore, the District Attorney is continually placed in the difficult position of prosecuting the complainant on the one hand, and being asked to prosecute the police officer on the other.

This problem has led to situations in which neither case ever gets to the trial stage because of pressure on the complainant from the police, the judges and the District Attorney to agree to the dropping of the criminal charges against the complainant in exchange for an agreement that he will not press criminal or civil prosecutions against the police officer. This practice was confirmed in the *Philadelphia Inquirer* investigation in which three cases were cited where the Assistant District Attorney offered such deals. Philadel-

[13] The full statistical breakdown of criminal charges filed against complainants and the number of complainants not charged is as follows:

	1/1/74-6/30/74	7/1/74-12/31/74	1/1/75-6/30/75	Total
Criminal charges against complainant•	52	96	134	282
Assault & Battery on Police Officer	32	53	55	140
Disorderly Conduct	22	39	27	88
Resisting Arrest	20	47	33	100
Terroristic Threats	2	0	0	2
Other	15	37	49	91
No Criminal Charges against complainant	19	60	65	144
Total	71	156	199	426

• *Note*: Multiple charges are often filed against each complainant.

phia Inquirer, Feb. 16, 1975, at 6-A, col. 6. The *Inquirer* concluded that:

> "Some judges and assistant district attorneys protect policemen from civil suits or criminal charges by telling civilian defendants that charges against them will be dropped or sentences lightened if the civilians agree in turn to drop complaints against the police . . . ." *Id.*, at 1-A, col. 4.

Frequently, defense attorneys are quick to advise their clients to accept such deals rather than risking a guilty verdict and possible criminal sentence. However, the ultimate effect is to allow police misconduct to go unchecked and to emasculate the remedy of a private criminal complaint.

C. Private civil suits for damages continue to be an inadequate remedy to redress grievances of police misconduct.

Judge Fullam said in his opinion that "Private suits for damages are expensive, time-consuming, not readily available, and not notably successful; moreover, they have no preventive effect." 357 F. Supp. at 1319. Because the costs of litigation are very high and the chances of recovery are improbable, few attorneys are willing to take police brutality cases on a contingent fee basis. The Lawyers Reference Service in Philadelphia has been unable to obtain attorneys to handle these cases.[14] At the present time, the Philadelphia

[14] Statement of Isadore Winderman, Esquire, Director of the Lawyer's Reference Service of Philadelphia at a meeting of the Governor's Regional Planning Commission on Thursday, April 17, 1975.

Bar Association has established a special volunteer panel of attorneys to represent clients who allege police misconduct. However, the panel consists of fewer than twenty-five attorneys, an insufficient number to handle the large volume of cases.[15] Therefore, attorneys have only been secured for cases involving the most serious instances of police abuse.

Furthermore, as noted by the District Court, the civil damage suit has not been an adequate remedy because lawsuits are defended by the City of Philadelphia rather than by the individual police officer involved. The individual police officer is insulated from the procedure by the City and is not held directly accountable for his behavior. Thus, even if a monetary payment is awarded to the complainant, the civil damage suit has almost no deterrent effect.

III. The Relief Granted by the District Court Is Appropriate and Necessary To Remedy the Continuing Problem of Police Misconduct in the City of Philadelphia

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In our society, the ultimate responsibility for effectively curbing abuses of "legal" authority must rest solely upon the judicial process. In *Lankford v. Gels-*

[15] Statement of Bruce Thall, Esquire, staff attorney with the Philadelphia Bar Association's sponsored Public Interest Law Center of Philadelphia at a meeting of the Governor's Regional Planning Commission on Thursday, April 17, 1975.

ton, 364 F. 2d 197 at 203 (*en banc*) (4th Cir. 1966), the court recognized the "strong obligation on the court to make sure that similar conduct [unconstitutional police activity] will not recur." This judicial obligation is similarly present here where the plaintiffs have fully established the defendants' unconstitutional behavior and the limitations inherent in the existing complaint procedure. 357 F. Supp. at 1318, 1321. An injunction ordering implementation of an effective procedure for dealing with civilian complaints alleging police misconduct is a requisite step in the District Court's obligation to prevent future unconstitutional police behavior.

Allowing an anachronistic grievance machinery to exist is worthless and dangerous for it compels the frustrated community to reject it and embrace more lethal instruments of protest against the police. As the Fourth Circuit Court of Appeals recognized in *Lankford*:

> "The police department is society's instrumentality to maintain law and order, and to be fully effective it must have public confidence and cooperation. Confidence can exist only if it is generally recognized that the department uses its enforcement procedures with integrity and zeal, *according to law and without resort to oppressive measures. Law observance by the police cannot be divorced from law enforcement. When official conduct feeds a sense of injustice, raises barriers between the department and segments of the community, and breeds disrespect for the*

> *law, the difficulties of law enforcement are multiplied.*" (Emphasis added.) 364 F. 2d at 204.[16]

An improved civilian complaint procedure will facilitate police enforcement of the laws by making individual police officers accountable for any illegal behavior, thereby increasing respect for the police. Public disrespect for the police is a conceded factor related to the propensity of violent outbursts in black communities.[17]

At a time when Philadelphia and all other major urban areas demand law and order through increased police protection, public respect for the police, with its resultant beneficial effect on the efforts of police departments, cannot be overemphasized. Without this respect, efforts to insure law and order in Philadelphia will be inhibited by mistrust, suspicion and fear

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[16] *See also, Lewis v. Kugler*, 446 F. 2d 1343 at 1352 (3rd Cir. 1971), quoting Mr. Justice Brandeis, dissenting in *Olmstead v. United States*, 277 U.S. 438, 485 (1928): "In a government of laws, existence of the government will be imperiled if it fails to observe the laws scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites everyman to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means . . . to declare that the government may commit crimes in order to secure the conviction of a private criminal . . . would bring terrible retribution. Against that pernicious doctrine this court should resolutely set its face."

[17] *See Lankford*, 364 F. 2d at 204, and Report of the National Advisory Commission on Civil Disorders, at 93 (Government Printing Office No. 1968-0-291-729, March 1, 1968).

on the part of the people the police are sworn to protect. The road to community peace and tranquility can be opened by the adoption of a legal, compassionate complaint procedure wherein citizens and police alike are treated fairly and equally. The present "procedure" has only served to reinforce mutual distrust and has aggravated the antagonism already existing between police and citizens.

Relationships between the police and the community are rubbed raw by ineffective complaint procedures that cause frustration and community tension and which too often escalate into a confrontation. Without improvement of this complaint procedure, relations between police and community will suffer from a lack of cooperation and confidence. The civilian complaint procedures, as outlined by Judge Fullam, afford the Philadelphia Police Department an opportunity to discover deficiencies as well as to establish an important channel of communication between the police and the people they serve.

CONCLUSION

All evidence indicates that police misconduct by officers of the Philadelphia Police Department continues to be a steadily increasing problem. Existing remedies to redress citizen grievances, including the filing of complaints with the Police Department and the District Attorney's office or the filing of private civil damage suits are ineffective.

The procedures delineated by the District Court are absolutely essential to begin the process of enabling citizens of Philadelphia to redress their grievances. The Commonwealth of Pennsylvania endorses the form of remedy adopted by the District Court and, therefore, respectfully requests this Court to affirm the District Court's relief.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 74-942

FRANK L. RIZZO, *et al.*,

Petitioners,

v.

GERALD G. GOODE, *et al.*,

Respondents.

JAMES H. J. TATE, *et al.*,

Petitioners,

v.

COUNCIL OF ORGANIZATIONS ON PHILADELPHIA POLICE ACCOUNTABILITY AND RESPONSIBILITY, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF OF THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

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BRIEF OF THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

CONSENT TO FILING

This amicus brief is filed, pursuant to Supreme Court Rule 42(2), with the written consent of all parties to the case.

INTEREST OF AMICUS CURIAE

The Lawyers' Committee for Civil Rights Under Law was organized on June 21, 1963, following a conference of lawyers called at the White House by the President of the United States. The Lawyers' Committee is a non-profit private corporation whose principal purpose is to involve private lawyers throughout the country in the struggle to assure all citizens of their civil rights through the legal process. The Committee includes three former Attorneys General, two former Solicitors General, thirteen past presidents of the American Bar Association, a number of law school deans, and many of the nation's leading lawyers.

The Lawyers' Committee and its local committees, affiliates, and volunteer lawyers have been actively engaged in providing legal representation to those seeking relief under federal and state civil rights legislation and the Reconstruction Amendments to the Constitution. As part of these efforts, the Lawyers' Committee is particularly concerned with ensuring that institutions of government at every level in the United States are responsive to the need to protect and preserve the constitutional rights of individual citizens. Because the lower courts in this case properly enforced the constitutional requirement that police not violate the rights of citizens and entered an order which will not interfere with the legitimate operations of the police, the Lawyers' Committee files this amicus brief to urge that the decision be affirmed.

STATUTE INVOLVED

The Civil Rights Act of 1871, 42 U.S.C. §1983, provides:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

QUESTION PRESENTED

On the basis of the evidence presented to them, were the lower courts in this case justified in concluding that the Philadelphia Police Department has been engaged in a pattern of violations of the constitutional rights of citizens, due in substantial part to inadequate supervision by superior officials of the conduct of police officers, and that the least intrusive potentially effective remedy for this pattern of unconstitutional action is to require the Police Department to set up an adequate internal system of handling citizens' complaints about misconduct by individual police officers?

STATEMENT OF FACTS

The full factual background of the case is set out in the opinions of the courts below[1] and in the Brief for Respondents. In brief, the facts are as follows:

Two separate civil rights class actions were brought in 1970 by groups of unrelated plaintiffs against officials of the City of Philadelphia, including the Mayor, the Commissioner of Police and various other high-ranking

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[1]The opinion of the District Court is reported at 357 F. Supp. 1289 and is reproduced beginning at page 65a of the Appendix (hereinafter cited as App.). The opinion of the Court of Appeals is reported at 506 F.2d 542 and is reproduced beginning at page 4a of the Appendix to the Petition for Certiorari (hereinafter cited as App. Pet. Cert.).

police officials, claiming widespread violations of the constitutional rights of Philadelphia citizens by members of the Philadelphia Police Department. The two actions were ultimately consolidated for disposition by the District Court, and, accordingly, were treated as a single litigation by the Court of Appeals.

At trial, the plaintiffs presented evidence of approximately 40 specific instances of alleged police misconduct. The trial judge entered extensive findings of fact with respect to each incident. With respect to the incidents presented in *Goode,* the trial judge found at least seven instances of misconduct by the police toward these plaintiffs (principally involving one officer DeFazio) consisting of illegal arrests (Shaw, Goode), unnecessary force (Shaw, Goode, Brown, Sisco and Reas), racial slurs (Brown, Reed) and antisemitic remarks. The trial judge further found that, despite the numerous justifiable complaints relating to DeFazio's conduct, his superiors never meaningfully disciplined him,[2] no records were kept of the complaints, and DeFazio's repeated record of misconduct and the complaints thereof had no effect upon DeFazio's official fitness ratings.[3]

With respect to the 28 incidents in *COPPAR*, the trial judge described in detail the conduct of the police and found that the evidence showed "widespread" violations of citizens' legal and constitutional rights, principally:

(1) arrests "for investigation";

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[2]DeFazio's two short suspensions were both with pay, *i.e.*, unscheduled vacations.

[3]In fact, as the number of instances of misconduct increased, DeFazio's official rating improved.

(2) mistreatment—including both unlawful arrests and beatings—of citizens who question the propriety of police conduct in specific cases;

(3) improper charges of resisting arrest when the arrest was unlawful to begin with; and

(4) extreme overreaction, frequently including use of unnecessary force and assaults and beatings of civilians, in connection with actual or reported assaults on police.

The trial court concluded that this repeated misconduct was the natural and foreseeable result of the institutional failure of the Department to supervise police officers' conduct or to discipline or otherwise control officers who act unlawfully or unconstitutionally. Thus, the court found that where police officers act unlawfully "little or nothing is done [by the Department] to punish such infractions, or to prevent their recurrence." (App. at 126a, 357 F. Supp. at 1319). The court also found that it is "the policy of the department . . . to avoid or minimize the consequences of proven police misconduct . . . ." (App. at 124a, 357 F. Supp. at 1318).

In this regard, the court found that the Department fails to maintain adequate records of incidents of misconduct (particularly ones involving racial bias) in connection with performance ratings of individual officers, and that it is "the policy of the department to discourage the filing of such [citizens'] complaints . . . and to resist disclosure of the final disposition of such complaints." (App. at 124a, 357 F. Supp. at 1318). As a result of its refusal to maintain records or process complaints, the Department has no method of identifying officers who engage in conduct of the type found by the court to be unlawful. Thus, the Department is in no position to evaluate or supervise those officers.

The trial court determined, therefore, that the plaintiffs had made a sufficient showing of unconstitutional conduct by the Department to warrant some form of relief under 42 U.S.C. §1983.

The court next dealt with various forms of relief proposed by the plaintiffs. After carefully considering both the need to protect the plaintiffs' constitutional rights and the necessity to avoid undue interference with the workings of the Philadelphia Police Department, the trial court rejected the *COPPAR* plaintiffs' request for the appointment of a receiver for the Department. The court also determined that detailed injunctive relief was unnecessary since many of the abuses in this case might well be resolved by a consent injunction entered into by the same defendants in another case involving similar issues, *Alexander v. Rizzo*, (E.D. Pa., C.A. No. 70-992).

The court found that a sufficient remedy for most of the abuses not covered by the *Alexander* decree would be the institution by the Police Department of a procedure for handling and maintaining records of citizens' complaints against individual police officers. The trial judge further determined that such a remedy would be the least intrusive feasible mechanism which could provide relief of the sort to which plaintiffs were entitled. Accordingly, he directed the parties to prepare and submit a proposed form of order setting up a program for police handling of citizens' complaints of police misconduct. After the parties were unable to agree on an appropriate form of order, the judge ultimately entered an order (App. Pet. Cert. 20a) setting forth detailed procedures for the handling of citizens' complaints by the Philadelphia Police Department.[4] As entered, the decree tracked the

[4]The trial court retained jurisdiction to modify the procedures upon application of any party in interest.

Department's proposal in a number of major respects as to the allocation of responsibility for maintaining and processing such complaints.

The defendants then appealed to the Court of Appeals for the Third Circuit, which affirmed the judgment of the District Court. The Court of Appeals held, *inter alia*, that there was adequate evidence to support the District Court's findings of a pattern of police misconduct in violation of 42 U.S.C. §1983; that the pattern of misconduct was sufficiently substantial to warrant the granting of relief; and that the order entered by the District Court was an appropriate form of relief for the constitutional violations found.

ARGUMENT

THE DISTRICT COURT'S ORDER WAS BASED ON ADEQUATE EVIDENCE AND IS AN APPROPRIATE FORM OF EQUITABLE RELIEF.

A. The Evidence of Record Shows a Pattern of Tolerance of Police Misconduct for Which Petitioners Are Legally Responsible Under 42 U.S.C. §1983.

Although the petitioners have never contested the specific findings of police misconduct in this case and although their Brief purports to be limited to the propriety of the District Court's order, Amicus feels compelled to address at the outset what appear to be suggestions woven into the petitioners' other arguments that there were no findings below of participation by them in the constitutional violations and that, therefore, the entry of any relief under 42 U.S.C. §1983 was improper. Petitioners' contentions in this regard both misstate the lower courts' findings and miscomprehend the law.

1. *Petitioners' Responsibility.* As the petitioners assert throughout their Brief, they are the officials charged by law with the supervision and control of the Philadelphia Police Department,[5] an organization having almost 7,500 individual police officers at the dates involved in this case.[6] The day-to-day conduct of those officers on the job will inevitably reflect their perception of the desires and expectations of their superiors. Indeed, as the commentators have uniformly observed, a police department is substantially more hierarchical in its organization (resembling in this regard the military) than most other governmental and private organizations.[7] Under these circumstances, it hardly needs elaborating to say that the expectations of a superior may be communicated by indirect and tacit means as well as by direct and explicit ones.

The trial court specifically found, on abundant evidence, that a principal cause of the instances of police misconduct presented in this case was the failure of superior officers of the Philadelphia Police Department (including the Commissioner and Deputy Commissioner of Police) and their civilian superiors (the Mayor and the City's Managing Director)—the petitioners in this case—to control and supervise the conduct of individual members of the Police Department. In particular, the District Court found that the Police Department's systematic failure to keep records of citizens' complaints; dis-

[5]See also the provisions of the Philadelphia Home Rule Charter, cited at pages 4-5 of petitioners' Brief.

[6]The precise figure was 7,439 officers in 1969. See Ruchelman, *Models of Police Politics—New York City, Chicago, Philadelphia*, reprinted in L. Ruchelman, *Who Rules the Police?*, at 254 (1973) (hereinafter cited as Ruchelman).

[7]*See, e.g.*, Ruchelman, *supra* at 249.

couragement of the filing of complaints by citizens against policemen; failure to investigate complaints; and failure to discipline adequately policemen as to whom citizens' complaints have been shown valid,[8] all operated to encourage or acquiesce in a pattern of misconduct by some police officers. The Court of Appeals affirmed these findings of the District Court.

Under these circumstances, the petitioners can hardly dispute that they are indeed responsible for the policies of the Department, and that these policies are responsible for the pattern of unconstitutional police activity found to exist by the lower courts.

2. *Relief Against Petitioners.* As a legal matter, the propriety of an injunction against a police department for unconstitutional action of its officers due to the failure of superiors to exercise proper supervision and control was settled by this Court in *Allee v. Medrano*, 416 U.S. 802 (1974) (injunction against Texas Rangers proper where officers violate constitutional rights of citizens).[9] See also *Monroe v. Pape*, 365 U.S. 167 (1961); *Hague v. CIO*, 307 U.S. 496 (1939).

Furthermore, it is particularly compelling to regard the toleration of constitutional violations by superior police officials as calling for relief under 42 U.S.C. §1983 because it is clear that one of the principal reasons for the enactment of Section 1983 was the toleration by state

[8]See also Schwartz, *Complaints Against the Police: Experience of the Community Rights Division of the Philadelphia District Attorney's Office*, 118 U. Pa. L. Rev. 1023 (1970).

[9]Ten courts of appeals had previously reached the same result. *E.g., Smith v. Ross*, 482 F.2d 33 (6th Cir. 1973); *Wright v. McMann*, 460 F.2d 126 (2d Cir.), *cert. denied*, 409 U.S. 885 (1972); *Schnell v. City of Chicago*, 407 F.2d 1084 (7th Cir. 1969).

officials after the Civil War of abuses of the constitutional rights of blacks. See *Monroe v. Pape, supra,* 365 U.S. at 174-77. Indeed, ever the dissenters in *Allee v. Medrano, supra,* 416 U.S. at 858 n.20, cited with approval a law review article[10] which made the point that the critical feature of many police conduct cases was the *toleration* of misconduct by superior officers, not their direct participation therein.

Accordingly, on the evidence of record, the lower courts were amply justified in finding a violation of 42 U.S.C. §1983 in the petitioners' systematic failure to control misconduct by their subordinates in the Philadelphia Police Department, at least insofar as the propriety of equitable relief directed at them is concerned.

B. The Order of the District Court Is a Wholly Appropriate Remedy for the Violations Found.

In our view, the District Court's order, as affirmed by the Court of Appeals, is a model of restraint. The courts below, having found a pattern of violation of constitutional rights by the Philadelphia Police Department, fashioned an order which was specifically tailored to the particular violations and was designed to be as unintrusive as possible on the legitimate workings of the Department. The petitioners now make a number of arguments in support of their contentions that the entry of any injunctive relief at all, and of the type of injunctive relief chosen by the courts below in particular, was improper. We deal with these contentions *seriatim* below.

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[10]Comment, *The Federal Injunction as a Remedy for Unconstitutional Police Conduct*, 78 Yale L.J. 143 (1968).

1. The Present Case Presents a Justiciable Controversy.

Without precisely saying so, petitioners appear to be claiming that the present case does not present a justiciable controversy because the lower courts did not hold that the Department's complaint review procedure was in and of itself unconstitutional. Petitioners contend that the lower courts have improperly entered a judgment against them based upon a consideration of the "wisdom, need, desirability or appropriateness" of the Department's regulations and that courts have no power to inquire into such matters. Pet. Br. 18-19.

Petitioners' claims in this regard are plainly incorrect because they have confused the wrong (unconstitutional Department action) with the remedy adopted to cure it.[11] It goes without saying that a person seeking injunctive relief under 42 U.S.C. §1983 need not allege or show that he has a constitutional right to a particular type of relief to present a justiciable controversy. Rather a plaintiff must allege or show that he has been or will be injured by some violation of his constitutional rights. As this Court put it recently in *O'Shea v. Littleton:*

> "Plaintiffs in the federal courts 'must allege some threatened or actual injury resulting from the putatively illegal action before a federal court may assume jurisdiction.' " 414 U.S. 488, 493 (1974).

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[11]Petitioners' confusion on this point is somewhat difficult to understand since the District Court explicitly stated that its order was not based on a determination that the Department's procedures were constitutionally defective, but that revision of those procedures was "a necessary first step in attempting to prevent future abuses." App. at 130a, 357 F. Supp. at 1321.

Where a plaintiff makes the necessary allegations of injury and then prevails on the merits by showing unconstitutional action on the defendants' part and resultant injury, the court is empowered under 42 U.S.C. §1983 to fashion appropriate relief. *Allee v. Medrano, supra; Schnell v. City of Chicago,* 407 F.2d 1084 (7th Cir. 1969); *Lankford v. Gelston,* 364 F.2d 197 (4th Cir. 1966). Such relief is awarded because it is designed to cure the demonstrated unconstitutional actions of the defendants, not because the relief itself is constitutionally required in the absence of proven unconstitutional conduct.

In the present case, the lower court found "that violations of legal and constitutional rights of citizens by the police [department] are . . . widespread . . . ." (App. at 124a, 357 F. Supp. at 1318). These findings were based upon fully 47 pages of specific discussion and findings relating to unlawful action by Department officers and injury to the respondents and the class they represent. (App. 73a-119a.) Accordingly, the lower court entered an injunction designed to remedy the constitutional violations it found and both its findings and the relief awarded were affirmed by the Court of Appeals.

There can thus be no doubt that respondents' initial allegations, and the findings of the courts below, show the presence of a justiciable controversy in the present case. Indeed, this is clear from a comparison of the present case with the authorities cited by petitioners.

For example, petitioners cite *Gilligan v. Morgan,* 413 U.S. 1 (1973), where this Court held nonjusticiable a suit brought by certain students of Kent State University seeking, as a result of one incident of alleged misconduct by the Ohio National Guard, an order setting standards for the training, kind of weapons, and scope and kind of

orders to control the actions of the National Guard. Not only did the case involve a request for broad relief based on an isolated incident, but it also involved the doctrine of separation of powers in that the regulation of the militia has been expressly entrusted by the Constitution to the Congress and by it, in part, to the Executive branch. In contrast, in the present case, no separation of powers question is involved (indeed, 42 U.S.C. §1983 is expressly aimed at controlling the conduct of State officials, such as petitioners) and the injunctive relief ordered below is based on a continuing pattern of conduct by the petitioners which has been and remains a substantial contributing cause of the violations of the constitutional rights of respondents and their class.

Petitioners' reliance on *O'Shea v. Littleton,* 414 U.S. 488 (1974), is equally misplaced. *O'Shea* involved the propriety of a complaint for injunctive relief against allegedly unconstitutional conduct by a State magistrate and a State judge. This Court held that the plaintiffs there failed to present a case or controversy in that there were insufficient allegations of continuing conduct which was likely to affect the plaintiffs, none of whom was "identified as himself having suffered any injury in the manner specified." 414 U.S. at 495. In the present case, however, the petitioners have not even contested the trial court's findings of continuing illegal conduct by the police which directly impacts on the respondents' class and inadequate control of that conduct by petitioners. The alternative ground of decision in *O'Shea* was simply an application of the rule established in *Younger v. Harris,* 401 U.S. 37 (1971), against federal court interference with State criminal prosecutions. Here, of course, no

such interference is present.[12] *Cf. Doran v. Salem Inn, Inc.*, 43 U.S.L.W. 5039 (June 30, 1975); *Steffel v. Thompson*, 415 U.S. 452 (1974).

In this case, of course, both unconstitutional conduct by the police and resulting injury to respondents have been found by the lower courts, and those findings are not even contested here. Accordingly, this Court's statement in *Laird v. Tatum*, 408 U.S. 1 (1972), with reference to judicial control of unconstitutional conduct by the military is of particular applicability to the unconstitutional police activity involved in this case:

> "[W]hen presented with claims of judicially cognizable injury resulting from military intrusion into the civilian sector, federal courts are fully empowered to consider claims of those asserting such injury; there is nothing in our Nation's history or in this Court's decided cases, including our holding today, that can properly be seen as giving any indication that actual or threatened injury by reason of unlawful activities of the military would go unnoticed or unremedied." 408 U.S. at 15-16.

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[12]Petitioners' reliance on *Hague v. CIO, supra*, is somewhat mysterious. Petitioners claim that this Court's refusal to permit a lower court to *save* a blatantly unconstitutional ordinance by rewriting it should be read as a determination that mandatory relief against city officials is generally improper. What petitioners ignore is that the relief ordered by this Court was more severe than that ordered by the lower court, namely, an injunction against enforcement of the ordinance altogether. In fact, *Hague* stands as strong support for the lower courts' decisions here in that it recognizes the propriety of equitable relief against unconstitutional conduct by city officials such as petitioners.

2. Respondents Have No Adequate Remedy at Law.

Petitioners claim that injunctive relief is inappropriate here because respondents have an adequate remedy at law. This contention is wholly without merit.

First, 42 U.S.C. §1983 specifically authorizes injunctive relief against unconstitutional official action and "where . . . there is a persistent pattern of police misconduct, injunctive relief is appropriate." *Allee v. Medrano, supra*, 416 U.S. at 815 (majority opinion), 838 (dissenting opinion); *Dombrowski v. Pfister*, 380 U.S. 479, 485-89 (1965); *Hague v. CIO, supra.* This, of course, is precisely such a case.

Second, suits for damages by those subjected to unconstitutional conduct by the police will not suffice to prevent recurrence of such misconduct. For instance, the offending police officers will generally be judgment proof and their superiors may have a partial immunity to damage suits though not to injunctive action. See *Wood v. Strickland*, 95 S. Ct. 992 (1975); *Scheuer v. Rhodes*, 416 U.S. 232 (1974). Moreover, as the District Court specifically found here, private damage suits are "inadequate" because they

> "are expensive, time-consuming, not readily available, and not notably successful . . . ." (App. at 126a, 357 F. Supp. at 1319.)

This conclusion by the District Court is in full agreement with the views of Chief Justice Burger:

> "The problems of both error and deliberate misconduct by law enforcement officials call for a workable remedy. Private damage actions against individual police officers concededly have not adequately met this requirement . . . ." *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388, 421 (1971).

In sum, respondents and other citizens of Philadelphia are entitled to an effective remedy against the sort of police misconduct shown here and, contrary to petitioners' contentions, a private action for damages is not such a remedy. As the lower courts have found here, only injunctive relief offers any hope of effectively protecting the constitutional rights of citizens from systematic police abuse.

3. The District Court Was Justified in Ordering the Department To Improve its Handling of Citizens' Complaints.

Petitioners next claim that the federal judiciary is wholly without power to order a municipal police department to establish adequate internal procedures for handling citizens' complaints about police misconduct because the determination as to the necessity for such procedures is "discretionary" and, therefore, the decisions of police officials on this isssue must be left to the judgment of the electorate. But petitioners wholly fail to recognize that the Fourteenth Amendment, and 42 U.S.C. §1983, were enacted for the specific purpose of limiting the power of elected or appointed officials to engage in unconstitutional treatment of citizens. The fact that a majority of voters in a city might possibly approve of the sort of police violations of the Constitution shown in this case does not make the evaluation of police conduct a political question or preclude an injunction which requires a police department to modify its existing citizen complaint procedure in order to end a pattern of unconstitutional conduct.

Moreover, contrary to the contentions of petitioners that a requirement that a police department establish some form of internal review and control of the conduct of its members is a novel and oppressive concept, it can

safely be stated that every professional evaluator of police affairs is in agreement that an adequate form of internal control is a necessity for a properly run police department. *See, e.g.*, Standard 5.4, and related commentary at pages 164-67, of the American Bar Association's *Standards Relating to the Urban Police Function* (1973), which were unanimously approved by the Executive Committee of the International Association of Chiefs of Police in December, 1972; National Advisory Commission on Criminal Justice Standards and Goals, *Report on Police, Model Standards for Police Internal Discipline*, Standards 19.1-19.6 (1973); The President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society*, at 115-16 (1967), and *Task Force Report: The Police*, at 193-97 (1967); Note, *The Administration of Complaints by Civilians Against the Police*, 77 Harv. L. Rev. 499 (1964).

The reason for this general agreement is both straightforward and exemplified by the facts of this case. As the President's Commission on Law Enforcement and Administration of Justice has stated:

> "There is no profession whose members are more frequently tempted to misbehave, or provided with more opportunities to succumb to temptation, than law enforcement. The opportunities arise, on the whole, from the simple physical fact that policemen generally work alone or in pairs, out of sight of their colleagues and superiors." *The Challenge of Crime in a Free Society*, at 115.

In such a context, where the basic constitutional rights of citizens are at stake, it is particularly important that institutional restraints on official misconduct exist. When the absence of an adequate system of internal control can, as here, be shown to have contributed to an

excessive number of instances of unconstitutional police conduct, it is well within the power of a federal court to require that effective internal controls be instituted.

Indeed, in this connection it is most revealing to compare the injunction entered by the lower courts with that approved by this Court in *Allee v. Medrano, supra.* Thus, in *Allee* this Court approved an injunction which prohibited specific acts of misconduct in the carrying out of their duties by members of the Texas Rangers on the ground that such an injunction was necessary to protect the constititutional rights of the respondents in that case. This Court approved such an injunction even though, to some extent, the result was to make the Rangers subject to possible contempt proceedings for improper arrest and similar decisions in the field. Here, in contrast, the injunction requires only the promulgation and maintenance by high-ranking city officials of a system of internal police procedures for handling citizens' complaints.

It would appear self-evident that, as the lower courts concluded, an order instructing the Philadelphia Police Department to institute procedures aimed at increasing its ability to discipline its errant members is a far more innocuous interference with the Department's operations and command structure than any other type of order which could provide the relief the lower courts found necessary.[13]

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[13]Since the petitioners have consented to the entry of an injunction prohibiting the police from certain forms of misconduct in *Alexander v. Rizzo,* (E.D. Pa., C.A. No. 70-992), it is possible that they believe, as a matter of legal principle, that prohibitory injunctions are preferable to mandatory ones. But see *Developments in the Law—Injunctions,* 78 Harv. L. Rev. 994, 1061-63 (1965).

4. Petitioners' Objections to the Precise Form of the Trial Court's Decree Are Wholly Unsupported by Any Evidence of Record.

The petitioners devote six pages of their Brief (pages 29-35) to a litany of horrible consequences which they assert will follow from the trial court's judgment in this case. However, petitioners failed to make a single one of these objections to either the trial court or the Court of Appeals in this case, and there is no evidence at all in the record of this case to support any of these objections. Indeed, as the Brief for respondents shows in detail, many of the objections which petitioners now assert most vigorously relate to matters which are either existing practices of the Philadelphia Police Department or were suggested initially to the trial court by petitioners in the proposed form of order submitted by them. The impropriety of such arguments by petitioners in this Court should be readily apparent.

Petitioners are asking this Court to serve, in effect, as a trial court for the purpose of making factual determinations as to issues wholly outside the record. Such a role contemplates that this Court could appropriately reverse the decisions of the District Court and the Court of Appeals in this case on alleged "facts" not of record and on grounds never presented to either of those courts. This Court has invariably rejected such attempts to circumvent its appellate functions in the past. *E.g., Witherspoon v. Illinois,* 391 U.S. 510, 516-18 (1968), and *General Motors Corp. v. Washington,* 377 U.S. 436, 449 (1964) (Court will not reach claims unsupported by evidence in the record); *Adickes v. S.H. Kress & Co.,* 398 U.S. 144, 147 n.2 (1970), and *United States v. Spector,* 343 U.S. 169, 172 (1952) (Court will not decide issues not raised below by petitioners). And it should do so again in this case.

Furthermore, petitioners have totally ignored paragraph 7 of the trial court's order (App. Pet. Cert. at 23a) which states "this Court reserves jurisdiction to modify this Order and the attached procedures and to grant such further relief as may be appropriate, upon the application of any party in interest." In the event that petitioners seriously believe any of the specific provisions of the order entered below would unduly interfere with the operations of the Philadelphia Police Department, they will be at liberty, after an affirmance by this Court, to seek a modification of those procedures from the District Judge in a proceeding in which their objections may be fully explored and appropriately resolved.[14]

Finally, petitioners' predictions of adverse consequences from the procedures established by the trial court's order are purely speculative and, in fact, contrary to the judgment of most professional police administrators. For example, in the *Model Standards for Police Internal Discipline* promulgated by the National Advisory Commission on Criminal Justice Standards and Goals, it is stated that "the chief executive of every police agency immediately should insure that the investigation of all complaints from the public, and all allegations of criminal conduct and serious internal misconduct, are conducted by a specialized individual or unit of the involved police

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[14] In this connection, the trial court has already recognized the need to minimize interference with the day-to-day operations of the Police Department.

> "[D]eference to the essential role of the police in our society does mandate that intrusion by the courts into this sensitive area should be limited, and should be directed toward insuring that the police themselves are encouraged to remedy the situation." App. at 127a, 357 F. Supp. at 1320.

agency." Standard 19.3. Similarly, Standard 19.5(3) provides that: "An administrative factfinding trial board should be available to all police agencies to assist in the adjudication phase." Indeed, as the authorities cited at page 17, *supra*, uniformly recognize, there is no serious disagreement among police professionals (other than petitioners) with the proposition that any properly run Police Department should have an effective internal mechanism, such as that required by the trial court's order in this case, for investigating and adjudicating claims of misconduct by police officers.

CONCLUSION

As the foregoing discussion demonstrates, the two lower courts found, on abundant evidence, that the petitioners herein are responsible for a continuing pattern of unconstitutional conduct by the Philadelphia Police Department. Taking careful consideration of the necessity for minimal interference with Police Department procedures, the lower courts entered an injunction which they found to be the least intrusive relief which could potentially remedy the violations found. The petitioners' legal arguments concerning the lower courts' asserted lack of power to order the Department to improve its

procedures for handling citizens' complaints of police misconduct are without merit and their objections to the specifics of the order are without foundation in the record. Accordingly, the lower courts' decisions should be affirmed by this Court.

Respectfully submitted,

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